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*Outline*  
*of the*  
**ENGLISH CONSTITUTION**

*Second Edition*

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**THE**  
**ENGLISH CONSTITUTION**





**HISTORICAL OUTLINE**  
**OF THE**  
**ENGLISH CONSTITUTION**  
***FOR BEGINNERS***

**BY**  
**DAVID WATSON RANNIE**

**NEW YORK**  
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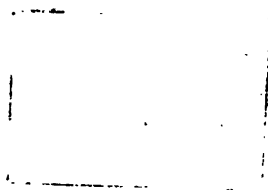
AS its title indicates, this little book is meant only for beginners. I hope it will be found sufficiently accurate and complete to be of use as an elementary introduction to the admirable text-books on the English Constitution which already exist.

I have to express my gratitude to the Rev. Sir GEORGE COX, Bart., who has kindly read most of the proof-sheets and helped me by many suggestions.

D. W. R.

CONHEATH, DUMFRIES, N.B.

*July 1881.*



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# HISTORICAL OUTLINE OF THE ENGLISH CONSTITUTION.

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## CHAPTER I.

THE ENGLISH AND THEIR POLITY. A.D. 449-1066.

I. **The Constitution** of a country is the group of arrangements by which its government is carried on. These arrangements owe their origin sometimes to the will and ingenuity of one man or of a small body of men, and sometimes they are determined by circumstances and the experience of centuries. As a rule, those Constitutions have lasted longest and been most successful which have grown most slowly ; and perhaps we may add that those have been best which have owed more to circumstances than to the schemes of one man or of a few men. **The English Constitution** is the group of arrangements by which the government of England (and, we may now say, of Scotland and Ireland too) is carried on. These arrangements have taken a very long time to become exactly what we now see them to be ; and circumstances have done more to produce and modify them



than the schemes of a few individuals. Therefore, the English Constitution is likely to be a strong and successful one. This little book will try to tell how the group of arrangements we call the English Constitution began about 1300 years ago, and slowly grew into their present form.

2. **The Celts and the Romans.**—In the most distant times of which their history tells us, the British Islands were inhabited by a race of people called **Celts**. The **Irish**, the **Welsh**, and the **Scottish Highlanders** are descendants of these people. They speak different languages, and some of them wear a different dress from Englishmen and Lowland Scotchmen. With many excellent and brilliant qualities, the Celts have never had much talent for governing either themselves or others. That great nation, the **Romans**, who conquered a large part of the world known to them, conquered Britain also, and ruled it with a rod of iron for centuries. But getting into difficulties in other parts of the empire, the Romans needed all their soldiers, and sent for the forces which occupied Britain. Once gone, the Romans did not return. The islands were left to the Celts, and soon no trace of the Romans was to be found, except roads and camps, which are pointed out still. So, what with the Celts' want of talent for governing and the sudden and complete withdrawal of the Romans, in studying the history of the English Constitution we have to think very little about either the Celts or the Romans.

3. **The English Invasions.**—The poor Celts, though they got quit of the Romans, were not left long to themselves. In many districts of the north and

centre of Europe which the Romans had not conquered—parts of what we now call Germany, Denmark, &c.—there lived a race of people, with several divisions having separate names, some of which you shall hear presently, but which just now you must call **Germans**. These Germans were very brave and hardy, and they greatly harassed the Romans by invading the territories they had conquered. Finally, they quite superseded the Romans over nearly the whole of Europe. Moreover, *they had a very great talent for governing*, as great as, if not greater than, that of the Romans, though their plans and arrangements were quite different. Many of the Germans lived near the sea, and so they were sailors as well as soldiers. Now, you must fix your thoughts on three divisions of the Germans, the **Saxons**, the **Angles**, and the **Jutes**. They had the bravery and the talent for governing which all the Germans had. Then, as they lived principally in what we now call the north of Prussia, they were accustomed to sail on great rivers and on the sea. And so it was natural for them to cross the German Ocean, and seek a home for their increasing numbers behind the white cliffs and beyond the marshy flats which bounded it on the west. And this, in fact, they did, in many detachments and at various times, in the course of the **fifth** and **sixth** centuries of our era. The Romans had taken their final departure from Britain in the beginning of the fifth century. We know that the Celts had not been able to resist the Romans. The centuries of harsh Roman rule had crushed them, and made them still less able to resist invaders ; so when the Germans came, they

met with little opposition. The Celts gradually retired northward and westward before them, chiefly to what we now call Cornwall, Wales, Cumberland, and the south-west and north of Scotland. In the rest of what we **now** call England and the south-east of Scotland, the Angles, the Saxons, and the Jutes had everything their own way ; and they acted just as their far-off descendants have acted in Australia and New Zealand ; *i.e.* they did not merely take possession in legions of soldiers, as the Romans had done, but they came in **families**, and lived in Britain just as they had lived in Germany. I have spoken of *three* tribes as invading and colonising Britain. Of these three the **Saxons** were by far the most numerous and important. Yet the **Angles** were important enough to give their name to the new German colony, which came to be called the land of the Angles—**Angle-land, England**. The three tribes settled in different parts of the country, and kept separate for a short time ; but soon they began to intermarry, and became thoroughly mixed. So you must learn to call them by *one name*, a name you know very well. You must learn to call them the **English**.

4. **The Beginnings of the Constitution.**—Thus, by about 600 A.D. a great number of Germans, called the English, were firmly settled in every part of the present England, west of the eastern boundary of Cornwall, Wales, and Cumberland, and in the south-eastern portion of the present Scotland. As I said, the English came in families, and lived in England just as they had lived in Germany. I said that all Germans, and therefore that the English, had a great

talent for governing. Now several old writers have fortunately left us accounts of the **arrangements for living and governing** devised by the English both in their native and adopted homes—in other words, of their early **constitution** ; and, as this book is about the English Constitution, it is very important that we should study its beginnings. So, in what remains of this chapter, I will try to show what these early arrangements were. The subject is interesting for two reasons : first, because the arrangements, made by people with a great talent for governing, are good in themselves ; and secondly, because they were made by the ancestors of most of us—of all Englishmen and most Lowland Scotchmen.

5. **The English Families.**—If people are to live together **according to any rule**, the simplest association they can make is that of the **family**. To the English the family tie was very important, for they were chaste, affectionate, and domestic. Therefore, they lived in families ; and, as you must carefully notice, **they held land in families**. When colonists occupy a new country, the first question we naturally ask about them is, How do they allot and hold the land on which they settle ? We have no exact information as to how the English at first *allotted* the land of England ; but, after a time, the old writers tell us that it was **held in parcels by families**, *i.e.* groups of people of which the members were kin to one another. Land was then, as it must always be, of two sorts, **arable** and **waste** land—*i.e.* pasture or forest. Now, suppose a band of Englishmen in those old days, related to one another, held a parcel of land, partly

arable and partly waste. The arrangement they made was that each man had assigned to him, sometimes by lot, sometimes otherwise, a piece of arable ground which, at certain intervals, say once a year or seldomer, was taken from him and given to another, while he got a neighbour's piece, which had been treated in the same way. The waste land, meanwhile, was held by the band, and used without any particular arrangement. This plan was called the **Mark System**. You will perhaps say that in this section I am telling you more about landholding than about the English families; but the subject of **landholding** is so important that I shall often have something to say about it as I proceed. Just now I am only showing how the English, when they first came to Britain, held land in families, or bands of blood-relations.

6. **The English Social Ranks.**—Leaving the family, let us see into what **ranks** the English people were divided. There were three principal ones with various names, but which you had better think of as **Nobles**, **Freemen**, and **Slaves**. This division was very general among the German races, and our forefathers adopted it in both when they lived on the Continent and afterwards in England. The nobles formed the highest rank. So long as the English were heathen, those men were nobles **who were supposed to be descended from the gods**. By-and-by, as you shall hear, the English gave up heathenism and became **Christians**, and the nobility was conferred **in reward of merit**. In those rude times bravery and skill in soldiery were thought the greatest merits a man could have. So, latterly, the English nobles were

almost always successful soldiers. An English noble, then, of 800 or 900 A.D., was very much like a **peer** of the present day ; for, as you know, the Queen does not give the dignity of peerage to any one because he is supposed to have a more divine nature than other people, but because he has been a great soldier or a great statesman, or for some such reason. Like modern peers, **the English nobles transmitted their dignity to one of their children.** Next to the nobles came the **freemen.** **All men were freemen who were not slaves,** and who had not either the supposed divine descent or the distinguished merit which entitled them to be nobles. There were two great classes of them : **landed freemen** and **landless freemen.** The landed freeman held land, the landless freeman did not. So much was made of landholding by the old English, that unless a man held land he was not thought much of. So the **landless freemen,** in order to have position, used to **put themselves under the protection of landed freemen,** who answered for them, or, as we should now say, **represented** them, in many ways. Then came the **slaves.** They were of no account at all, except for the work they could do. They were simply the chattels of their owners. Their children were slaves like themselves. To one of these three ranks all Englishmen at that time belonged. We have other ranks amongst us now. But you may, roughly, liken the nobles to our peers ; and the freemen to our landlords and tenant-farmers. Fortunately, we have nothing like the slaves in modern Britain.

7. **Townships and Parishes.**—And now, knowing

something of how the English lived together in families and social classes, we must try to find out their early plans of **governing**—*i.e.* of making laws, and obliging people to keep them. Everybody knows what a **parish** is—that it is the smallest division of a county that holds meetings and does business in the way of relieving the poor, &c. &c. Well, the parish was, among the old English as among us, the smallest body that met and did business, or **administered**. Only, as a parish is also a **district with a church in the centre, and under the charge of a clergyman**, and as the English began to combine and administer before they knew anything of Christianity, these divisions were called **townships**; and afterwards they were always called so, except when they were spoken of in connexion with the church and clergyman, when they were called parishes. But the two names really stood for the same thing. The beginnings of the townships were probably the families I spoke of in section 5. They used to hold assemblies, **at which all the free-men of the township were entitled to be present**. They elected **headmen**, and made regulations, and saw to the keeping of the laws, very much as our *police* do now. Many of my **English** readers know what townships are at the present day. They also know what **vestry meetings** are. The *township assemblies* were very much like **vestry meetings**.

8. **Burghs**.—Sometimes, when a tribe found it necessary to set up a fortress, a sort of military township sprang up around it called a **burh** or **burgh**. These burghs were the beginnings of our **boroughs and cities**. But the beginnings were very unlike what

came after, for the old English never thought of living in cities, as we now understand them.

9. **Hundreds.**—The next largest division that had arrangements for administering and governing was the hundred. How this name was originally given we do not precisely know: the German races were fond of dividing into hundreds. When we can see them clearly in the far past, they are simply districts, much larger than the townships, but otherwise like them. Each hundred had an assembly, which met once a month, and was attended by all landed freemen with a certain quantity of land within the hundred, and (you must particularly notice this) by the headman and four chosen freemen from each township within the hundred. These five men attended to look after the interests of their neighbours, according to a principle which is the most important in the working of the English Constitution—namely, that when people are too numerous to attend individually at places where matters that affect their interests are being settled, they agree upon certain delegates, who attend for them, or represent them. This principle of representation is, I say, the most important in the working of the English Constitution. It is very interesting to watch it beginning to act so early in the governing plans of the English; and I shall carefully mark it whenever it reappears—giving stability to the structure of the Constitution as it rises. The business of the hundred assembly or court was mainly to declare justice in answer to the suits of aggrieved persons; in other words, the assembly was principally a court of justice. Every member was en-



titled to act as a judge. Again, many of my English readers are familiar with hundreds as districts in counties, though there are no longer many hundred courts. In Scotland, hundreds have never been known.

10. **Shires.**—The next division with arrangements for governing which you must hear about was the **shire**. The word shire is really the same as **share**, and it meant a division or **share** of something larger than itself. When we speak of shires nowadays, we mean **counties**. But the old English knew nothing of our counties ; and their shires were **districts larger than the hundreds, just as the hundreds were larger than the townships**. Like hundreds and townships, shires had assemblies or **gemót**, and headmen. The shire-assembly met twice a year. There were two interesting peculiarities about shires which you must carefully note, one connected with the **assemblies**, and the other with the **headmen**. (1) The **representative principle**, which we saw brought delegates from each township to the hundred court, was at work in the **shire-assembly**, and with still larger results. In every shire assembly sat the **township-headman and four freemen of each township within the shire** ; so that really a shire-assembly was an assembly of the whole people of the shire, inasmuch as it was an assembly of delegates chosen by the whole people. (2) Whereas each township and hundred had only one headman, each shire had **two**—one called an **ealdorman**, or elder-man ; the other called a **scir-gerefa**, which is old English for shire-headman, and is the original

form of our word **sheriff** (that is, shire-reeve). How these two headmen, or *magistrates* as we may call them, were elected, you shall hear presently.

11. **Kings**.—And now I must pass at once to speak of a most important governing arrangement among the early English, namely, the institution of **kings**. So long as the English lived on the Continent, they did without kings ; and their most important magistrates were venerable nobles, whom they made **ealdormen**. But after they settled in Britain, and became more important, the English tribes began to wish to have leaders, who should not so much do work as look grand, and represent the grandeur and dignity of the tribe. So they fixed on some noble, generally one who had been a very brave soldier, and was supposed to be closely connected with the gods, and called him **king**, and venerated him very much. After a time it became customary to **crown** the elected king and **anoint him with oil**, to show his dignity and consecration. After **coronation** and **unction**, the king **swore** to keep the peace and govern righteously ; and the people **swore** to obey the king, provided he governed righteously. **One of the king's family was chosen to succeed him when he died**. I have called the institution of English kings a most important governing arrangement. The English always made much of it, though the kings did little work ; just as we greatly reverence the Queen, not because she does much work in the State, but because she is a very grand personage, and it makes us feel grand to be able to have her and keep her on the throne.

12. **The Witena-gemót**.—In connexion with the

king was an important assembly, which did much work. It was called the **Witena-gemót**, or Assembly of Wise Men. It met three times a year, and consisted of the king, certain important nobles and landed freemen, the ealdormen of shires, and some important clergymen. It was supposed to **represent** the nation, but it really represented only the **wise people** in the nation—~~people~~ who were able to help the king with their advice. It did not represent the nation as the shire-assembly represented the shire, **for no delegates from the mass of the people sat in it**. Still, its decisions were, in a sort of way, **national** decisions. When the institution of kingship had become well established in England, it was the business of the witena-gemót to *elect* kings; and, if the nation wanted to get quit of them, to *depose* them. Then, **the king and the witena-gemót** used to elect the ealdorman, or first magistrate of the shire; while **the king alone** chose the sheriff, or second magistrate of the shire. The rest of the business of this assembly was to make laws, to decree justice in the last resort, to superintend certain transactions about land, etc. etc. One or two more of its functions will come into view as we proceed. **It was always a small body.**

13. **The State.**—We have thus considered the most important **arrangements for governing** which the English set up during the centuries following their first arrival in Britain. But an important question may have occurred to you, to which I must try to give an answer. One is inclined to ask: Where, in a tribe or nation (and at first there were a great

many in Britain), with its machinery of assemblies, magistrates, king, witena-gemót, did the ultimate power lie? It is natural and right to ask such a question when we are studying the group of arrangements for governing, the constitution, in any country. And if the question were asked about Russia, for instance, some of my readers would have no difficulty in answering it. They would say at once: The ultimate power in Russia lies with the Emperor. If any of the governing plans in Russia were to break down, the Emperor's authority alone could repair them or devise new ones. And Louis XIV. who, 200 years ago, governed France very much as the Emperor of Russia governs his dominions, when some one in his presence spoke of the *State*, meaning the source of ultimate governing power, said: 'The State? *I* am the State;' meaning, I, the king, am the source of ultimate governing power. Now, an **old English trib. or nation was itself the source of ultimate power.** The king was not; for he was called into existence by the witena-gemót, which was at any rate *understood* to represent the nation, and by it he might be set aside. Though all the governing arrangements had broken down, and all the magistrates, including the king, had been destroyed, so long as the nation held together, the **State** would still have been there. The **nation**, with the right to genuine representation in the various assemblies, and especially the assembly of the shire, and to what was considered representation in the witena-gemót, was the **State**. In other words, each nation was in theory a **self-governing nation.**

14. **Landholding.**—And now I must return to the subject of landholding. The last time I spoke of it was in connexion with the English families who held and cultivated parcels of land **in common**. As time went on, and England became more and more thoroughly colonised, the practice of **separate** rather than **common** ownership began to be introduced. For instance, before the time of kingship, the principal *noble* in a tribe would take a slice of land for himself. Then a brave soldier would be rewarded by an estate. When kings were set up, they would naturally get large estates, and so on. Yet the feeling which gave rise to common ownership remained so strong, that after the tribes had extended their boundaries and become nations, all land which was not held by separate individuals belonged to **the nation**, and nothing could be done with it without the consent of the *witena-gemót*, the so-called national council. Land held by the nation was called **folk-land**, the land of the folk or people; while separate estates were called **book-land**, *i.e.* land of which the charters or title-deeds were written down. An estate of book-land could be cut out of the folk-land at any time with the consent of the *witena-gemót*; and both sorts of land might be **let to tenants**, very much as land is let to tenants in Great Britain now. People came to hold different positions, and have different names according to the size of their estates. Of these names you need learn only three: (1) the **ceorl**, the man who held a very small piece of land; (2) the **thegn**, who held a larger piece; and (3) the **eorl**, who held a much larger piece.

15. **Change in English Arrangements.**—Between the first settling of the English in Britain and the great event which will be described in the next chapter about 500 years intervened. During this long time the arrangements for living and governing which I have sketched changed considerably, though none of them were exactly set aside. The changes were almost always due to one cause—a **tendency to make landholding of more and more consequence**. For instance, the early kings were kings of **the people**; the later ones, kings of **the land**. By-and-by, the king came to be looked upon very much as the proprietor of the folk-land. Another change was **the increased power of the kings**. The tribes who colonised Britain were, as you know, very numerous at first. After a time, disputes and wars sprang up among them; and in these wars, of course, the strongest were always successful. So there was a regular process of thinning-out in the English kingdoms. Soon, instead of countless tribes, we find **seven or eight kingdoms**. By about 950 A.D. there was only **one kingdom**. As the kings came to have larger kingdoms, it was natural that their power should come to be greater; and by the time there was only one king it is not wonderful that he was looked on as a sort of emperor. Still, those changes, as I said, did not upset the original arrangements; and it shows the great talent for governing which the English had, that the plans they made so early were able to survive the tear and wear of time, and to resist the ambition of able kings.

16. **The Danes** were at that time great sailors and

pirates ; and several times they made incursions on England. The last of these incursions, early in the 11th century, was so successful that a Danish family was set on the throne, and the first king, **Canute**, was an able man. But the English gathered themselves together and sent away the Danes. The Danes made no change in the constitution, partly because they stayed too short a time, and partly because they were, if not quite **Germans**, at least so like them that they did not quarrel with English arrangements.

17. **The English Military System.**—The English, like all nations in that old time, had to fight a great deal ; for might made right much more then than it does now. Their military system was extremely simple, and can be described in a very few words. **At first every grown-up man who was not a slave was compelled to bear arms, if need were.** The host was thus the nation in arms. The military leader, or the king, used to give grants of land as a reward to successful soldiers ; and most great leaders and all kings had bands of such soldiers with estates, who were regarded as the **personal following** of the leader or king. So that military service came to be thought of as having a sort of connexion, though not a very strict one, with the all-important **land tenure**. Besides, every soldier was expected to pay for his suit of armour, and as armour grew more and more costly, those only who were well off could easily afford to fit themselves out. Soldiership, therefore, tended to become confined in practice to certain classes, though still in theory **military service, at least in defensive warfare, was the obligation of all freemen.**

18. **The English Judicial System.**—In describing the English assemblies, I pointed out that their principal business was to declare justice in answer to the suits of aggrieved persons; and that all who sat in the assemblies had the right to do this. But, as it is easier to collect the opinions of a few than of a great many people, the duty which devolved on all in the courts of the hundred and the shire was, in actual fact, **discharged by a committee of twelve.** From the judgment of these courts the aggrieved person could appeal to **the king and his witenagemót.** The king was considered the fountain of justice. When he was elected he swore to keep the peace; and in doing so he swore not to let any breaches of it go unpunished. Yet, though **the peace of the nation was the king's peace,** it had been originally entrusted to him by the nation; and the courts of the hundred and the shire had a judicial responsibility which was native to them and in nowise deputed by the king. For, as the English were a **self-governing**, so they were a **self-judging** people. As the kings got more power, they made it felt in judicial as well as in other departments. **To large proprietors they gave judicial rights;** and these men sat in the halls of their houses and answered the suits of their dependents, very much as judges sit in **courts-baron** in England now. So judicial rights, like military obligations and social position, came more and more to depend on **land-holding.** The law which the English judges expounded was the collection of traditions which had been generated by the common-sense and justice of the German tribes, and acquiesced in by the nation.



The stock was occasionally added to by legislation in the assemblies, but more in the way of defining what was vague than of inventing what was new. Latterly, some of the kings wrote down the laws. Every man, except a slave, was amenable to law, and was bound to appear and answer for breaches of 'the peace,' either personally or by means of a **representative**. The truth of the charge against an accused person was sought to be made out by one of two processes: **compurgation** and **ordeal**. By the method of compurgation the defendant in a suit tried to get a certain number of neighbours of good standing and character to swear to his innocence, and according to his success he was judged. By the method of ordeal, the accused underwent some great risk to his life, *e.g.* by holding a piece of red-hot iron in his hand. If he took no harm, he was pronounced innocent; if he suffered seriously, he was held guilty. Punishments were not very varied. Sometimes a criminal was exiled; sometimes he was put to death. In all cases he could atone for his offence by a money-payment to the aggrieved person if he had only injured him, and to his survivors if he had taken his life. The life of every man had a certain money-value called **wergild**, which varied according to his social position, that of the king being highest.

19. **The English Religion and Ecclesiastical System.**—When the tribes, who were afterwards to become the English nation, first came to Britain, they were heathens, like all the Germans, and worshipped imagined personifications of the great forces of nature and the ruder virtues of men, such as frost, fire, and

bravery in war. But their religion had become very shallow ; and when, in 596 A.D., a great missionary, Augustine, came from Rome, the hardy tribes sincerely and eagerly embraced Christianity. The new faith, which had taken such firm root, kept its ground and spread widely. In 668 A.D. the Pope sent a foreigner, called **Theodore of Tarsus**, who established himself in **Canterbury**, as Augustine had done, and set up an ecclesiastical system which was very much the same, externally at least, as that which exists in the **Church of England** now. There were two archbishoprics, **Canterbury** and **York**, and Theodore was the first **Primate of all England**. Then **bishoprics** or **dioceses** were formed. Theodore made them conterminous with the numerous tribes or kingdoms : when the smaller kingdoms coalesced into larger ones, the dioceses kept their original bounds. There were about sixteen of them. **Parishes** were, as I said, the same as **townships**. **Archdeaconries** and **deaneries** were made after a while, and answered respectively to shires and hundreds. The clergy of the old English Church appear to have been, on the whole, good men. A very great many of them were **monks** ; and even those who were not seem to have minded their clerical work, and not to have become merely secular potentates, as they were very apt to do elsewhere. Still, though before all things Christ's ministers, they had a share in political responsibility. **The bishops sat in the shire-assemblies and the witenagemót**. The clergy were mainly supported by the tithes of freemen. So at a very early period there was established in England a branch of the great **Latin or Western Church**, which

we now call the **Roman Catholic Church**. This fact had much influence in giving a feeling of unity to the English people ; for, while they obeyed different kings, they all acknowledged the same unseen Master, and his one vicar, the Pope.

20. **Summary.**—You now know something of how the English lived together, and of their early Constitution between 600 A.D. and 1066 A.D. You know that they came over from the north of Prussia to Great Britain, which the Romans had been obliged to forsake, and which the Celts were not able to keep to themselves. You know how they came and settled in families, townships, hundreds, and shires ; how they elected kings, and how the kings conquered each other until there was only one left. You have heard of the assemblies of township, hundred, and shire ; and how, in that of the shire, representatives from all the people attended ; while the king had a council of wise men, called the *witena-gemót*, which was held to represent the nation. You have been told how these national assemblies administered justice, how the whole nation was liable to be called on to fight for its existence, and how it was Christianised. You are thus able to think of the English in 1060 A.D. as one nation, with one king, and one religion, that of the Roman Catholic Church ; in theory self-governing and self-judging ; while in practice, as has been pointed out, partly owing to the importance of landholding and partly to the increased influence of kings, the power of the king in matters of governing, and of great landholders in matters of judging, had become very large.

## CHAPTER II.

## THE NORMAN CONQUEST AND FEUDALISM. 1066-1154.

1. **The Norman Conquest.**—When the last king of the united English, Edward the Confessor, died, without children, there were two claimants of the crown, besides the natural heir—Edward's brother-in-law, **Harold**, and his cousin, **William Duke of Normandy**. Each of these men asserted that it was the wish of Edward that he should succeed. Of course, as you know, **no king could be chosen without the consent of the witena-gemót**, which stood for that of the nation. The witena-gemót decided in favour of Harold, and he was elected and crowned. That ought to have settled the matter ; but William of Normandy was ambitious, and anxious to wear the crown of England as well as a ducal coronet in France. So he made a great deal of what he professed to have been the dying wish of Edward the Confessor ; and in October 1066 he crossed the Channel to the south of England with a large Norman army, met Harold and the English on the field of **Senlac** or **Hastings**, and defeated them utterly. Harold was killed, and so were the choicest and bravest of the English **nobles** and **thegns**. William followed up his advantage ; and having beaten the English nation in the field, he easily persuaded the terrified witena-gemót to set him on the throne. On Christmas Day, 1066 A.D., **William the Norman was crowned king of England**.

2. **The Normans.**—The battle of Hastings and the

coronation of William the Conqueror were great events in the constitutional history of England, not only because they established a new royal family, but because they introduced a large influx of **new people** and **new governing arrangements**. For William, of course, brought many Norman followers and Norman customs into the country he had conquered. Before describing these customs and arrangements, I must, in a few words, tell who the Normans were. They lived originally in what we now call **Scandinavia**, and principally on the coast of **Norway**. **They were of the same race as the Angles and Saxons, and other tribes who joined to make up the English nation**; and, like all these tribes who lived near the sea, they lived much on the sea, and were inclined to be pirates. About 912 A.D. a band of these pirate Northmen sailed to the north-western sea-board of France, and got such a firm footing there that the king allowed them to keep the region they had overrun, which was called **Northman's land** or **Normandy**; while their leader was made a **ruling subject** of the king, with the title of **Duke**. So that by 1066 A.D., the year of the battle of Hastings, the Northmen or Normans had been settled in France for a century and a half, and had lived and governed, partly according to their native instincts, but mainly according to the practices prevailing among the French, or, as they were then called, the **Franks**, beside them.

3. **Norman Landholding.**—**The Norman Constitution was connected, in the closest manner possible, with the holding of land.** You know that the English Constitution had been becoming so too; that the

king was looked upon as proprietor of the **folkland**; and that great landlords often dealt out justice to their tenants and dependents. In Normandy the connexion was openly acknowledged, and influenced every department of government, as was the case everywhere among the Franks. I said that the first leader of the Normans was made a duke, and that he was a ruling subject of the king. As holding that position, **he was proprietor of all the land in Normandy so long as he acknowledged the headship of the king, who was proprietor of all the land in his dominions.** The duke allowed certain eminent men, his **nobles**, to hold estates, provided they acknowledged his headship, as he acknowledged that of the king. The nobles allowed other persons, less important than themselves, to hold pieces of their estate on the same terms; and so on. The nobles, or, as the Normans seem to have called them, **barons**, had a **right of judging** those who held land of them, just as many of the great English proprietors had. So that the barons had much power, and power often made them insolent and inclined to rebel. The result was that **the duke, unless he was very able, had less influence than he seemed to have.**

#### 4. Introduction of Norman Tenures in England.

—William the Conqueror was in no hurry to make great changes after his coronation. As king he was of course proprietor of the folkland; and out of it he gave estates to the **barons** who had followed him, while he left the English landlords to keep their estates undisturbed. But the barons were so oppressive in their rule that the English frequently rebelled,

and their rebellions gave William the opportunity of **making another Normandy of England** ; for the refractory English were punished by the confiscation of their estates, and the land which was taken from them was given to Normans, to be held after the Norman fashion. Rebellions and confiscations were very frequent ; so that by about 1080 A.D. there was a great body of Norman landlords in England. Even when the English were allowed to keep their estates, they gradually adopted the Norman way of holding and bequeathing them. Consequently, in a short time **Norman land tenures were almost universal in England**. They were called **feudal tenures**, from *feod*, estate ; and the system of which they were a part was called the **feudal system**. You shall hear presently how the feudal system affected **every department of government**. I must now, in a few words, show how under it the land was held. **The king was the supreme landlord**. Portions of land he gave to be held by certain of his barons and other nobles on condition of their giving him **fealty and homage**, and fighting for him in war ; while he, on his part, promised to give protection and administer justice to them. To give fealty was to promise to be faithful ; to give homage was to kneel down, put both hands within the hands of the king, and swear to be his man or vassal. Those who held land thus directly from the king were called **tenants-in-chief**. Their estates were generally very large ; and they gave portions of them to a set of tenants called **mesne tenants, who were to them precisely what they were to the king**, while they were petty kings to the mesne tenants. The main

practical service performed by vassals as the condition of holding land, and implied in the ceremonies of fealty and homage, was military service, and the extent and length of it at any one time varied according to the amount of land held. But, besides defending his lord in war, the vassal had to make certain **money-payments**—*e.g.* when an heir succeeded on the death of his father, he had to pay a sum to the feudal lord, called a **relief**, before the estate was re-delivered to him. Again, the vassal had to pay sums called **aids** on three occasions: (1) to redeem the lord from imprisonment or banishment; (2) to help to make the lord's eldest son a knight; (3) to help to make a marriage-portion for his eldest daughter. **There were several other payments**; but you need not learn any of them just now. So you see the feudal system of holding land and disposing of it was much more than a matter of pounds, shillings, and pence. **It was an elaborate arrangement which bound together many classes to protect and obey, to judge and be judged, etc.**

5. **Maintenance of the English Constitution.**—By making the feudal land system all but universal, William the Conqueror considerably changed English customs. But the important governing arrangements of which I told you in the last chapter, the **assemblies of township, hundred, and shire**, the new king left as they were, although in shires the king's officer, the **sheriff**, got to have more power. So that William **added to the English Constitution rather than altered it.**

6. **The Norman Social Ranks.**—In 1086 A.D. a



great survey of the inhabitants of England, and of their ways and means of life, was made, and the results of it were written down in what was called **Domesday Book**. Domesday Book still exists, and we find out from it with wonderful clearness the different classes of society twenty years after the Norman Conquest. These classes were distinguished by different relations to land ; and you must get to know and remember five of them :—(1.) The **tenants-in-chief** described in section 4. Some of these seem to have been spoken of as **barons** and some as **knights** ; but as a rule you had better think of them as **barons**. (2.) The **mesne tenants**, also described in section 4, who held land of the tenants-in-chief. You had better think of them as **vavasors**. (3.) **Freeholders**, to whom the barons, knights, and vavasors gave small estates on condition, not of military service, but payment of certain fruits of the land. They were often called **socmen**. (4.) A class of agricultural labourers, who, though little thought of and often oppressed, had yet a certain position as tenants of scraps of ground, and owed labour as a condition of their tenancy. You must call them **villeins**. (5.) The lowest grade of agricultural labourers, who were really slaves, though not perhaps so degraded as among the English before the Conquest. You must call them **serfs**. Thus, instead of the nobles, freemen, and slaves of the old times, we have this more complex five-fold division of society.

7. **The Norman King and his Household**.—So you see how William the Conqueror and his barons set up the feudal system in England, just as it had grown up in France. I said that the English govern-

ing arrangements were, in the main, left unaltered. But William was an able man with a great talent for ruling; and when he became King of England he surrounded himself with some institutions which worked very well alongside of the old English arrangements, and enabled him to bring his power to bear on the whole nation and so prevent the barons, who wanted to be petty kings, from weakening his authority. First, he had what was called his *household*—a band of servants with different functions exercised near the royal person. Then he had other servants, of whom you need remember only two, and their duties. (1.) **The Justiciar was originally the manager for the early Norman kings during their frequent absence from England.** After a time, he continued to hold office even when the king was present, and was his **chief minister, superintending the entire business of the kingdom. His office was never hereditary.** (2.) **The Chancellor was the principal secretary of the king,** and saw to the carrying out of what the justiciar planned. He also kept the **great seal,** with which all important national documents were sealed by the king, and this gave him much dignity. Both Justiciar and Chancellor were in early times invariably clergymen.

**8. The Great Council.**—In accordance with his desire to let the English Constitution alone, William the Conqueror continued the ~~witena-gemot~~, which met three times a year. But this national assembly, though it suffered no change at the hands of the king, felt the universal influence of feudalism. For whereas, before the Conquest, the qualification for

1 Wit en ā z r. a t

membership was **wisdom**, in the Norman period it was **tenancy-in-chief**. The name of the assembly was changed from **witena-gemót** to **Great Council**. About 1100 A.D., then, you must think of the great council as consisting of king, ealdormen (who had come to be called **earls**), bishops, abbots (or heads of monasteries), barons, and knights.

9. **The Exchequer**.--The next important institution which helped the king to rule with a firm hand was the **Exchequer**. This consisted of a certain small number of the king's most valued counsellors, who sat at certain fixed times in rooms at Westminster, and received **from the sheriffs** the revenues of each shire. Of these revenues a careful account was kept ; and the exchequer accounts have been preserved in wonderful integrity to this day. These revenues (which were the early taxes) were of four sorts : (1) the rents of those who gave money rather than military service for the land they held ; (2) **Danegeld**, a tax levied at first by the English to organise resistance to the Danes, and continued by the Normans as a permanent impost ; (3) sums received by the sheriffs for extra-judicial trials held by them ; (4) the money-payments I spoke of implied by feudal tenure, such as *reliefs*, *aids*, etc. **The Norman kings had a large income**. Necessarily, besides the sheriff, the justiciar and chancellor had much work to do in the exchequer.

10. **The Curia Regis** was another central institution. It did not differ much from the great council : in fact, it is to be thought of as the **Great Council sitting as a supreme court of justice**. Cases which

the inferior courts had failed to settle were brought up to it for decision. Of course the king and his ministers were present in person ; and **offences against them could be tried only in the Curia.**

11. **The Manor.**—You remember that, in describing some of the English estates, I spoke of the proprietors as declaring justice in **courts-baron**. These estates were called **manors** ; and in the Norman period almost all great estates were manorial, inasmuch as the landlords had rights of judicature over their tenants.

12. **The Feudal Barons.**—I have now sketched the main outlines of the feudal system, as the Norman Conquest and the reigns of the Conqueror and his sons developed it in England. I want to impress on your minds the importance of **the great barons with their judicial rights**. As I said, they tended always to become **petty kings** ; and very often, on the Continent, they swallowed up all the power, and left the king nothing but his crown, and sometimes not even that. Then, as they quarrelled among themselves, they kept the country in perpetual war. Fortunately for England, William the Conqueror had had experience enough to be alive to the danger, and was sufficiently able to guard against it by making his own central power very strong. But the danger was always present ; and when kings weaker or less wise than the Conqueror were on the throne, it broke out and brought much misery. In books on English history you will read of many rebellions of the barons, and how they had to be put down by the kings taking their estates from them into their own hands, **and so**

collecting the power they had scattered. You will read how **William Rufus**, who reigned 1087-1100 A.D., maintained the central power indeed, but did it so tyrannically that he gave some good cause for the barons to rebel, which they did again. **Henry I.** (1100-1135 A.D.) was an able man like his father, the Conqueror, and he kept the baronage in check, while he at the same time maintained the old **English Constitution**. But **Stephen** (1135-1154 A.D.) was weak and foolish; and the worst of all the rebellions occurred in his reign. The barons broke loose, and there was civil war and complete anarchy. **The miseries of the country showed in a bright and lurid light how dangerous the scattered powers of feudaism were.** The Norman kings could always reckon on the help of the English to subdue the vassals; for the native population felt that, though the royal rule was harsh, it was strong, and more endurable than the grinding tyranny of the kinglets.

13. **The Norman Army.**—The Norman army was very much the same as the English one, except that the connexion between land-tenure and military service, which was begun before the Norman Conquest, was completely established after it. Every baron or knight held his land on the express condition of giving a certain amount of military service to the king; and thus **the first force which the king could call upon to fight his battles both in England and Normandy was the whole of his tenants-in-chief.** Then the old obligation on all freemen to defend their hearths continued; and thus the freemen could form, if need were, a force like the militia

of the present day. But just as in great emergencies the militia may be called on to serve abroad, the armed freemen were often led across the Channel by the Norman kings. Besides, the Conqueror and his sons often had **bands of paid foreigners** to eke out their armies. So, what with the **tenants-in-chief**, the **militia**, and the **foreign mercenaries**, a Norman army was a formidable force.

**14. The Norman Judicial System.**—The courts of the hundred and shire were, as I said, unchanged by the Normans ; and justice was declared by them as before. As before, too, cases which they could not decide were carried to the Great Council, from which, as the **Curia Regis**, there was no appeal. Then, all **lords of manors and most landholders decided the civil suits of their tenants and vassals**. The Curia Regis, besides hearing cases appealed from the lower courts, had the sole jurisdiction in cases where the king was the offended party. Henry I., who felt the need of strengthening both the central and local courts against the power of the manors, began a very good practice **by sending his Justiciar and other judges to sit periodically in the local courts and inspect their work**. The methods of proof were the same as among the English ; and one was added which seems to have been purely Norman in its origin, viz. **trial by battle**. This method, like that of the ordeal (Chap. I. sec. 18), was an appeal to the decision of Heaven. Plaintiff and defendant fought in presence of judges, and he who was victorious was supposed to be also innocent.

**15. The Norman Church.**—When the Normans

came to England they found, as we know, a Christian church established there in connexion with the great Latin ecclesiastical system. The Normans were members of the Latin Church ; and therefore conquerors and conquered professed the same religion. In the end of the eleventh century the power of the Pope was very great, and his pretensions were greater than his power. The Conqueror and his sons brought the English Church more under the Pope's influence, and so strengthened the church, while they somewhat endangered their own supremacy. William pleased the Pope by allowing the clergy to meet and settle their own business in councils of their own, while the trying of spiritual cases in the hundred-court, shire-court, or Great Council was forbidden. In their special councils the clergy expounded the customs and traditions which were being collected throughout Western Christendom, and were by-and-by to be written down and acknowledged as **canon law**. To prevent the Pope from having too much sway in England, the Conqueror made **three important ecclesiastical regulations** : (1) no message from the Pope was to be received or acted upon without the king's knowledge and consent ; (2) no decision of an ecclesiastical council was valid without the king's consent ; (3) no baron or king's minister was to suffer ecclesiastical penalties without the king's consent.

16. **Summary.**—Thus, in 1086 A.D., the long rule of the English in the country they had so patiently colonised and so well governed was interrupted by the invasion of the Normans, who were closely akin to themselves. The victory of Duke William at

Hastings, and his consequent coronation at Westminster as King of England, made the English rebel ; and their rebellion gave the king an opportunity of confiscating the estates of those thegns and other landholders whom he had not slain in battle, and giving them to his fierce Norman followers. Soon the Normans were firmly settled. The land was held according to the feudal system ; *i.e.* the king was the supreme landlord, and all land was held mediately of him. Feudalism regulated the whole of society and every department of government ; for every class, from the king to the smallest proprietor, protected, judged, and governed the class next below it, and received in return, as the condition on which the land was held, homage, military service, and various money-payments. Such a system, where power was so widely distributed, was very apt to destroy royal authority ; and it would have done so in England if the Conqueror had not, on the one hand, preserved intact the ancient self-governing constitution of the English, and, on the other, surrounded himself by strong central institutions, by means of which he was able to regulate immediately judicial and financial affairs. So that the English nation got all the good of feudalism, and as little as possible of its evil. In 1154, when Stephen, the last purely Norman king, died, the throne was very secure and powerful ; the haughty vassals had been chastised into submission : the whole nation, either as a militia of freemen or an array of feudal tenants, was liable to be called on to fight the king's battles ; the popular courts were in full vigour and keeping alive the tradition of Eng-



lish liberty ; and the church, though the Conquest had bound it closer to the Pope and the growing canon law, was still under the control of state and king. We may conclude, therefore, that the eighty-eight years of Norman rule, though often years of oppression and bloodshed, were, on the whole, years of steady constitutional progress.

### CHAPTER III.

#### HENRY II. AND TRIAL BY JURY. 1154-1189.

1. **Accession of Henry II.**—Henry II. was grand<sup>(1)</sup>son of Henry I. through his mother, ~~Maud~~ <sup>Matilda</sup>. His father, Geoffrey of Anjou, had very extensive French possessions, to which, of course, his son succeeded. So that the dominions of Henry II. extended from the north of England to the Pyrenees, in the south-west of France. The rule of Henry II. was as able as his kingdom was large. In this chapter I will try to show how in his reign of thirty-five years he regulated and added to the Constitution which English and Normans had built up.

2. **The Normans and the English** had by this time lived so long together that they were really blended into one nation. The union was hastened by the fact I mentioned before, namely, that they belonged to the same race. And the nation which resulted from the union was not a new Norman, but the old English nation, influenced, modified, and strengthened by the Norman blood, laws, and cha-

1) Matilda was the daughter of Henry I. who was the son of William I. Conqueror. She married Geoffrey Plantagenet.

**racter.** The English language kept its hold in the conversation of the lower orders, and in such books as were addressed to a popular audience ; there was a steady stream of French ideas and influences flowing into England ; but the old landmarks were never obliterated. And Henry II., though his mother was Norman, belonged to another house from that of the Conqueror and his sons. He was of Anjou ; the first of the **great Plantagenet family** who so long wore the crown. He was a new king, and he ruled over a renewed English nation.

3. **The Policy of Henry II.** was, in its main motives and outlines, the same as that of the Conqueror and Henry I. He had the same appreciation of the old English popular assemblies and courts ; the same desire to make the central administration strong ; the same steady purpose to maintain civil control over the church. And his work was easier than that of his predecessors ; for the nation went along with him in both his first objects. The existence of the popular courts had been endeared to it by the experience and traditions of nearly 600 years ; and a strong central administration was the only means of checking that baronial tyranny which had wrought all the anarchy and horror of Stephen's reign. To maintain civil control over the church cost Henry a great struggle—a struggle which had issues reaching far into the future, but which at the time left the victory with the king.

4. **The King.**—In Chap. I. I tried to tell you how kingship arose among the English ; how the tribes fixed on some great noble who should be their head,

and impersonate their dignity, and in whose family the office should remain. I showed how fewer and fewer kings were able to exist in the same small island, until at last there was only one ; how this one had got to be very powerful ; and yet how he was all the time regarded as the possession of the nation, holding his office by their sufferance, and liable to be set aside at any time by the witenagemót. I showed how, after the Norman Conquest, the king was more important than ever, partly because by the feudal system he was lord of all the land in the kingdom, and partly because he was obliged to rule with great vigour in order to prevent his vassals from ruling instead of him. So that Henry II. was a more powerful king than any that had gone before him ; and, to add to his dignity, **the Scots**, whose land the English had only partially colonised, and who had gone on having kings of their own ; **the Welsh**, whom misfortunes had humbled ; and **the Irish**, whose land Henry had conquered after a fashion, acknowledged him as their lord. **He was thus Emperor of Great Britain and Ireland, as well as King of England**, though he was not called so.

5. **The Great Council**, the old witenagemót, continued to meet. It was no longer an assembly of wise men, but of tenants-in-chief, and *occasionally, though seldom, a body of picked land-holders, vavasors, and soc-men as well as barons and knights, who represented all the landowners of the kingdom.* It met as often as the king summoned it, and gave him advice in all matters connected with government.

6. **The Curia Regis** was, however, much more important than the Great Council, for upon it devolved the judicial work which used to be done by the witenagemót. In the twelfth century more was thought of making people keep such laws as were already in existence than of making new ones ; and **the judicial arrangements made by Henry II. were his most valuable addition to the Constitution.** During the Norman reigns, the Curia had been a court where justice was declared by the king and his principal ministers : (1) in cases appealed from lower courts ; (2) in cases affecting the king only. Under Henry II. it maintained this character ; but the king was seldom present in person, and the number of judges was fixed—first at eighteen, then at five. **The king's personal judgment, therefore, was seldom to be obtained in it ;** and those who wished such final authority on difficult questions had to approach the king and his **Great Council.** The Curia Regis always followed the king, and sat where he happened to be residing.

7. **Circuits.**—In Chap. II. sec. 14, I spoke of the custom introduced by Henry I. of sending a band of judges to sit occasionally in the shire-assemblies, and inspect the work done there. This good practice was continued by Henry II., and made more systematic. At last we find judges, called **justices in eyre**, making periodical circuits of the country, and trying cases regularly in the shire-assemblies, or **county-courts**, as the Normans had got into the way of calling them. **In this way, while the old English Constitution was maintained, the king was able to bring his central**

**authority immediately to bear in the most remote districts of the country.**

8. **Trial by Jury.**—The method of trial common to the English and other German tribes was, as you know, assertion and counter-assertion by plaintiff and defendant in presence of judges, and decision based on proof obtained either by compurgation or the less rational ordeal and trial by battle. Henry II., probably to save freeholders from the risk of such haphazard methods, brought into vogue a way of getting at facts, first in civil and then in criminal cases, which was the first form of what we now know and prize so much as **Trial by Jury**. How the kind of trial originated is matter of dispute : Henry II. did not invent it ; but he applied and developed it in English judicature. Juries in the twelfth century were of two kinds.

(1) **Juries of Inquest.**—In a civil dispute—*e.g.* if B had disputed the right of A to possess a piece of land—the matter would have been decided as follows :—A would have procured from the Curia Regis stoppage of all ordinary legal action ; B would have got four sworn knights **in his hundred or district** to get other twelve knights to give their opinion on oath as to whether he or A had the better title to the estate. Both A and B would then have gone before the judges with their jury of sixteen knights, and as soon as the jury had agreed in opinion, the judges would have given their verdict. In the event of the sixteen knights failing to agree, fresh juries might be chosen until unanimity was secured.

(2) **Grand Juries** were employed in criminal cases.

They were chosen in the same way as juries of inquest, and, like them, were made up of a definite number of knights—sixteen, or more usually twelve. They were then interrogated as sworn witnesses on the facts of the case at issue. Unlike modern grand juries, **they gave no verdict**; and for a long time truth was still decided by the ordeal. The jurors were perhaps at first chosen by the **sheriff**; but latterly always by the **county-court**, which, as you know, was thoroughly *representative* of the county or *shire*. You must carefully notice also that **they were always neighbours of the parties about whose cause they were to give evidence**. So that the establishment of trial by jury was an important application of the principle of **representation** to English governing arrangements. **Jurors were chosen by the representative county-courts; and their evidence was representative of the public opinion of the district of the pleading parties.**

9. **The Exchequer and Taxation.**—The king's great officers still sat, as in Norman times, as the **Court of Exchequer**, and received the revenue, which we may now always call **the taxes**. Under the Norman kings land only was taxed: Henry II. began to tax income and personal property as well. Income and personal property were called *movables*; and the land-tax, which used to be called Danegeld, was now generally called *scutage*, because it was assessed on the *scutum*, *i.e.* the knight's fee or estate. Moreover, he allowed vassals, who had hitherto been all obliged to give military service for the land they held, to give a sum of money instead, if they objected to fighting.

Such money was also called **scutage**. So that the taxes, old and new, for which the barons of the exchequer had to account to the king were : (1) the feudal payments ; (2) a land-tax, like the former Danegeld, called scutage ; (3) scutage in commutation of service ; (4) portions of personal property in emergencies. You must not suppose that all these taxes were annually or regularly collected ; they merely represented the revenue on which the king could count. As yet, in fact, there was little system in the assessment of taxes. **Probably in theory the payments were all voluntary** ; while in practice it would be known that resistance was useless.

10. **The Military System of Henry II.**—Henry II. strengthened and revived the military arrangements of the Norman kings, but did not substantially alter them. He continued largely to employ mercenaries in the wars in which his extensive dominion frequently involved him. He had still **the feudal force of barons and knights**. This force would indeed be lessened by the institution of scutage or money-payment in room of personal service ; but what he lost in number the king would gain in the quality of his soldiers, for as a rule those only would care to fight who were able to do so, while with the scutage he could hire mercenaries to eke out his army. **The defensive militia** was expressly revived in 1181 by an edict called the **Assize of Arms, which ordered every free-man to equip himself according to his means**. This militia was divided into a force for each shire under the command of the sheriff.

11. **Henry II. and the Church.**—The great object

of the ecclesiastical policy of Henry II. was to **maintain civil control over the church**. He found that the independence which the Conqueror had given to the clergy (Chap. II. sec. 15) was working mischief; that wrong-doing priests were not adequately punished by the courts, which alone had criminal jurisdiction over them; and that the power which was slipping out of the hands of the king was being gathered by the Pope. But Henry's plans were much disturbed by a personal matter. In books on English history you will read the romantic and terrible story of Thomas Becket; how he was, first, Chancellor of England, Henry's foremost counsellor, and his bosom-friend; how he was made Archbishop of Canterbury, became a fierce advocate of the independence of the clergy, and contended for the Pope against the king; how he went into long exile; came back under partial restoration of the royal favour only to find that the dislike of the king's friends had grown into a fixed purpose of assassination; and how he was at last murdered on the steps of the high altar in his own august cathedral, whose holy shelter he had sought. Into the details of this tragedy it is unnecessary to enter here: what I want you to know is that the claims of Becket, and of the clergy acting under his direction, aroused the king to assert his control over the church; and that his intense remorse for the archbishop's murder, the guilt of which he laid at his own door, led him to undo a good deal of his ecclesiastical work, and, at the bidding of religious emotion, to offer a measure of submission to the Pope, which his judgment reprobated.

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1 The Church Council. or Ecclesiastical



12. **The Constitutions of Clarendon.**—At Clarendon, in 1164, a Great Council was held ; and sixteen propositions were agreed on, which sum up Henry's ecclesiastical policy, and are famous as the **Constitutions of Clarendon**. Their spirit was that of the Conqueror's three restrictive resolutions (Chap. II. sec. 15), which they repeated ; **while they resumed the control of the clergy by the secular courts, which the Conqueror had suspended**. And although the penitent king went so far as to repeal the constitutions which had so enraged Becket, they seem to have been acted upon afterwards. At all events, their moral influence never was lost ; they were part and parcel of a great scheme of centralised rule.

13. **Summary.**—By the time Henry II. came to the throne in 1154, the Normans and the English had coalesced into one nation, of which the popular language and the popular institutions were English, and the court language and central government were Norman. Henry II. was neither Norman nor English ; but he was a great administrator and untiring reformer : he saw the value of the old English Constitution, and of the powerful central system which the Normans had superinduced upon it, and he maintained both. His great object was to connect the one with the other, under the social conditions prescribed by the persisting feudalism, and by means of the great principle of representation. And so he kept the Great Council, trying to make it represent all landholders ; strengthened the Curia Regis, and, by means of the circuit system, brought regularly within its cognisance the action of the local courts ; and, above all, took a

long step towards obtaining and bringing to his own ear a representation of the judgment of the community by domesticating the great method of Trial by Jury. And while, by the Assize of Arms, he made every free-man feel that he had a country to fight for, by the Constitutions of Clarendon he put on lasting record the claim of the Church of England to be a truly national church—the church of the king and people, and not a religious colony from Rome.

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## CHAPTER IV.

### THE CHARTERS. 1189-1297.

1. **The Reign of Richard I., 1189-1199**, important as it was in the history of Europe, has no special interest for the student of the progress of the English Constitution. Richard was nearly always absent from England and engaged on those great expeditions of united Europe to drive the Mahometans from Palestine, called the **Crusades**. During his absence the kingdom was governed by a succession of **justiciars**; and their rule, often unpopular, tested the arrangements made by Henry II. and his predecessors.

2. **Carucage**.—Richard's need of money was so constant and so great that he levied a **new land-tax of 5s. on every hundred acres of land**. A hundred acres was in those days called a **carucate**; and so the new tax got to be known as **carucage**. It was levied in 1198; and the evidence as to the property of individuals was obtained by means of **juries**. Twelve

knights in every county were got to declare on oath what the property of their neighbours was, so that the assessment might be just. So you see that even in such a common matter as assessing a tax, the method of **representation, of a few answering for all** (Chap. I. sec. 9), was used.

3. **The Accession of John** in 1199 began an important epoch in the constitutional history of England. John was the brother of Richard I., and consequently the son of Henry II. He had always given great trouble to his father; and when he became king he gave great trouble to England, for he was thoroughly treacherous. So that for the first time since the Norman Conquest, the throne was occupied by a man who was bad at heart, and who did not wish to rule well.

4. **The Loss of Normandy.**—All the kings of England since the Norman Conquest had, as you know, been dukes of Normandy as well, and Henry II. had in addition held Anjou, Maine, and some other parts of France, so that the King of England was a greater man in France than the French King. But Philip II. of France, who was contemporary with John, was able and energetic; and he and the French people won Normandy, Anjou, and Maine from John in 1205. The loss of these provinces was humiliating for the English; but in some respects it was the best thing that could have happened. It made the nation feel itself more entirely one. **The interests of the people now all lay within their own country.**

5. **The New Attitude of the Barons.**—Hitherto we have seen the great tenants-in chief selfish and

ambitious men, with a constant tendency to abuse the powers which feudalism gave them, and to make themselves petty kings. We have seen the king and the bulk of the people obliged to combine, and willingly combining, to restrain them. But a great many of the most troublesome of these barons were dead ; and their successors were different men—more English, and tutored to submission by the strong rule of Henry II. And so, when the loss of Normandy prevented the possibility of French ambitions, and the bad conduct of John threatened to destroy both church and state, the barons were ready to become patriots and **to lead the constitutional progress of the nation.** During the period which I shall sketch in this chapter **we shall find that the enemies of the Constitution were the kings, and not the vassals.**

6. **John's Quarrel with the Barons.**—King John was much galled by the loss of the French provinces, for he was really a good soldier, and no king likes to lose territory. So in 1213 he wished to lead his feudal army into Normandy and attempt its recovery. **But the barons absolutely refused to obey him, pleading that they were not bound to military service abroad.** There was thus something very like war between the barons and the king.

7. **The Council of St. Albans.**—John was so busy with a dispute with the Pope that he was not able just yet to think of avenging himself on his vassals. So the barons got into the way of holding **great councils** on their own account, that they might organise a national resistance to the bad king. One of these assemblies held at St. Albans in 1213, is very inter-

esting, because it is the first **Great Council** where there was genuine **representation**. At St. Albans there were present not only the ordinary collection of bishops and barons, but the headmen and four delegates from each township on the king's domains, just as if the assembly had been a county-court.

8. **Magna Carta**.—At their councils the barons brought out the laws of King Edward the Confessor and the engagements or **charter** of Henry I., and gradually drew up a long document founded upon them. When John was sufficiently disengaged, he began to make warlike preparations, but could not raise an army large enough to beat the barons, who were quite prepared to take the field against him. The king soon felt that his position as enemy of the nation was hopeless ; and on June 15, 1215, he came to terms by signing, at Runnymede, on the Thames, the document which the barons had drawn up, and which all the world knows, and every Briton is proud of, as **Magna Carta**, the Great Charter, or **statement of the long-established principles of government in defiance of which no king could be allowed to rule**. Of course, for the sake of appearance, the king gave the charter its final form, and issued it as if it had proceeded from himself. It is a long document, containing sixty-three clauses ; but you do not at present require to remember more than two of its provisions : (1) **No tax except the three feudal aids** (Chap. II. sec. 4) **could be levied without the consent of the Great Council, which was to be thoroughly representative of landowners.** (2) **No man was to be deprived of liberty except by the judgment of his**

**equals or the law of the land.** A committee of twenty-five barons was appointed to enforce the observance of the charter.

9. **Accession of Henry III.**—For eighty years, nearly the whole of the thirteenth century, the nation had to fight for the full enjoyment of the charter which it had thus won at sword's point from the king. In a few sentences I shall trace the progress of the fight ; and I shall then try to tell you the effect of the great charter, and the struggles to maintain it, on the governing arrangements of the English—in other words, **the constitutional progress of the thirteenth century.**

John died in 1216, a traitor to the last ; and his son, a boy of nine, succeeded as Henry III. The child-king, of course, could not rule ; and therefore the government was in the hands of the **ministers**, who during this reign had an importance they had not possessed before.

10. **The King's Ministers.**—Fortunately, Henry's guardian, the Earl of Pembroke, and the other ministers, were on the whole able and disinterested men. Still, they, and the barons generally, had an amount of power thrust upon them by circumstances which was dangerous to constitutional government. Besides, John's misgovernment had led a section of the barons before his death to call in the aid of the French heir-apparent, who was now Louis VIII. of France. This was a foolish step ; because it led, after a while, to the existence of two parties in England—a party who followed Louis, and a party who followed Henry. After some fighting, Louis was driven out in

1217. Then the ministers and barons tried to govern as well as they could : they **re-issued the charters more than once**, and did their best to banish all traces of the French. From the time of their vice-royalty we find **all royal officials elected with the consent of the Great Council**.

11. **Henry III.'s Rule.**—Henry considered himself sufficiently grown-up to rule in 1227. Had he possessed the qualities of his grandfather, Henry II., his personal direction of affairs might have been an unmixed advantage for England ; for a strong leader was needed to check the dissensions among the barons. But Henry III., though engaging and generous, was pliable and fickle ; and he was ~~not~~ careful to keep to the engagements of the charters. **And so the work of the barons, the leaders of the nation, was still a struggle—a steady resistance to the royal will.** They kept binding the king to promises which he always broke ; they tried to surround him with patriotic ministers, and he gave his ear and confidence to French favourites, who taught him un-English ways of governing.

12. **Simon de Montfort and the Barons' War.**—For a long time the resistance was not to blood. A loyal nation does not readily distrust its king. The barons had no accredited leader. About 1237 a Norman, called **Simon de Montfort**, who had been made Earl of Leicester, and who was stern, ambitious, and inflexible, began to head the national opposition. But even he did not resort to arms for more than twenty years. He had to reconcile the quarrelling barons to his leadership ; then he had his turn of attempting to win the king to

good government. Council after Council was held ; and many of the Councils were partially representative of all classes, like that at St. Alban's. But the king did not mend his ways. In 1258 a famous Council met at Oxford, and prepared a scheme of reform based on Magna Carta, and stringent as to frequent representative councils. To this scheme, known as the **Provisions of Oxford**, Henry promised adhesion. He then went abroad, and came back to forget that he had made the promise. In 1263 Simon de Montfort felt that war could be no longer delayed ; and he raised the standard of revolt. The war, which you must remember as the **Barons' War**, went on for two years with varying fortunes. At first Montfort had the best of it, and was able to dictate terms to Henry. But Henry asked the arbitration of Louis IX. of France ; and he gave judgment against the barons. So the war began again ; and in 1265 was fought the **battle of Evesham**, where Simon de Montfort was defeated and killed. The barons kept up the resistance a little longer, but the war was really at an end. In 1267 the king, apparently of his own free will, renewed the **Provisions of Oxford**, and kept them till he died in 1272. So that though the victory seemed to be his, the dead Montfort was the real conqueror.

13. **Edward I. and the Nation.**—Henry's eldest son, Edward, succeeded him quietly as Edward I. He was a born king ; and set to work at once to make laws, of which you shall hear something presently. But his very abilities made him somewhat despotic. He was involved in a deep quarrel with the Pope, and,



through him, with the clergy. The clergy were sometimes unwilling to pay taxes ; and the king was disposed to meet their unwillingness by demands hardly consistent with the Great Charter. So the nation, still led by the barons, roused itself to demand a reissue of the Charter—as they called it, a *confirmatio cartarum*, and in 1297 they obliged Edward to give it. The Great Charter was solemnly confirmed ; and means were taken to publish it completely, so that every individual might be acquainted with its contents. **It was the law of the land, which neither king nor people dared henceforth break.** The struggle was now over. Edward had no real wish to govern unconstitutionally ; and if any of his successors should attempt to do so, they would have to be treated as ordinary law-breakers. I must now tell you something of the growth of the Constitution in the thirteenth century.

**14. Legislation in the Thirteenth Century.**—The Great Charter itself, with what was added to it on the various occasions when it was reissued, sums up nearly all the **laws** that were made between the accession of John and that of Edward I. The arrangements for making laws were the same as in the English and Norman periods : *i.e.* **the king was said to make the law with the advice of his Great Council.** As we saw, Great Councils were more and more often **representative** as the century went on ; so that more and more **the king took the nation into his confidence when he made laws.** Edward I. made many good laws, of which you shall hear in connexion with Judicature and the Church.

**15. The Great Charter and Taxation.**—No addition to the number of taxes was made by any of the three kings whose reigns occupied the thirteenth century. The king still received the feudal revenues; scutage; carucage; and, occasionally, a tax on personal property, varying in amount (Chap. III. sec. 9). To these taxes all classes, including the clergy, were liable; but the clergy sometimes objected to paying, and the Pope often backed them up in their resistance. Of all the taxes, the personal property tax was the most apt to be burdensome, for its amount was not fixed; and thus, at any time, virtuous people might be impoverished to pay for the ambition or folly of the king. So it is impossible to over-estimate the importance of the clauses of Magna Carta which provided that **no tax (except the feudal aids, the payment of which was, as you know, the condition on which land was held) could be levied without the consent of a Great Council, thoroughly representative of all landowners.** The need of enforcing these provisions against the constant tendency of the kings to tax suddenly and exorbitantly was probably the most influential motive of the long struggle of the thirteenth century. And the nation never dared to relax its vigilance, even after the Charter was finally confirmed by Edward I. For warlike kings, as well as bad kings, were constantly needing money, and they were often tempted in emergencies to enforce its payment.

**16. Edward I. and Landholding.**—The feudal system went on; though the strong government of Edward I., like that of the Conqueror and Henry II.,

counteracted its worst, which were also its most important, tendencies. But Edward I., in 1290, made one change, so great that it deserves a section to itself. Whereas formerly **mesne tenures** could be multiplied to any extent, by the statute **Quia Emptores** Edward I. made every purchaser hold his land in time to come, not of the lord of whom he had purchased it, but of *his* lord. By the operation of this law, first the power of the **tenants-in-chief**, and then that of the king, got to be greater ; and the **scattering of powers**, so characteristic of feudalism, was prevented.

17. **Judicature in the Thirteenth Century** developed into very much what it is now in England. The Curia Regis, altered by Henry II., and sitting occasionally as the Exchequer, was still at the head of the judicial system ; but in the course of the reigns of Henry III. and Edward I. it was finally divided into the three branches with which English readers are familiar :—I. The **Court of Exchequer** watched over all matters connected with the revenue. II. The **Court of King's Bench** tried all cases which directly affected the crown. These two courts followed the king. III. The **Court of Common Pleas**, which sat always at Westminster, tried all civil cases which did not directly affect the crown. These three courts were the expansion of the old Curia Regis, which therefore ceased to exist under that name. Besides the central jurisdiction, the admirable **circuit system**, begun by Henry I. and developed by Henry II., was defined by Edward I. **Justices in eyre** were done away with ; but the country was divided into

four districts, each of which was periodically visited by two justices, who, **along with two sworn representative knights**, held **assizes** in the county-courts. At these assizes, ordinary district cases, called *nisi prius*, were heard. I have just spoken of **county-courts**, the old shire-assemblies. They, and the **hundred-courts**, continued as before, meeting, the former once a month, and the latter once every three weeks. **Their business was now almost entirely judicial, not legislative.**

18. **The Army.**—Change in the English military system tended rather to simplification than complication. *Mercenaries* were almost never used after Magna Carta ; for all true patriots in the thirteenth century strove to lessen the foreign influences which Henry III. was introducing into England. So that the land force on which Edward I. could reckon was twofold : (1) the feudal tenants-in-chief, who were generally the cavalry, and fought abroad, and who were obliged to fight forty days at a time ; (2) the ancient militia, reorganised by the Assize of Arms in 1181, which formed the infantry, and generally, though not quite invariably, fought at home. Besides this twofold land force, there was gradually growing up the beginning of a **fleet**, as was natural in a country like England. **Each maritime county was bound to supply a certain number of ships for the king's service.**

19. **The English Church in the Thirteenth Century** changed very considerably, and affected in many ways the growth of the Constitution. I told you how, as the power of the Roman Church increased, and the canon law was defined and written down, the

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Pope and the clergy became very ambitious, and how it was the aim of Henry II. to curb that ambition, as inconsistent with the good government of England. During the reign of John the Pope was Innocent III., an extremely able and ambitious man, who was constantly interfering with the affairs of kings and nations, and wished to be the feudal sovereign of all the Christian lands of the West, and to have authority in these lands as much higher than that of their kings as the authority of God is higher than that of men. And at the end of the century, during the reign of Edward I., Boniface VIII. was Pope—a man with the same claims and temperament as Innocent III. John was constantly contending with Innocent, and Edward I. with Boniface. John's quarrel concerned the appointment to the archbishopric of Canterbury, which he maintained was the right of the king. The Pope, on the other hand, asserted that the right was his, and demanded the acceptance of Stephen Langton, his nominee. John refused; and Innocent responded by placing the kingdom under an *interdict*, i.e. a suspension of all religious services and privileges. The king was at last frightened, and in 1213 he rushed into an extreme of submission. He not only accepted Langton, but acknowledged the Pope's feudal superiority, yielding his kingdom to him, and receiving it back for a money-payment. So in that quarrel the Pope got the best of it. Henry III. was not inclined to assert his independence; so the controversy slumbered during his long reign. But when Edward and Boniface ruled together, the ambition of the Pope and the independence of the genuine Eng-

lish king came into violent collision. Boniface interfered by trying to exempt the English clergy from taxation ; and in 1296 he published an ordinance or *bull*, called *clericis laicos*, forbidding the king to tax the clergy at all. The great object henceforward of the nation was first to evade, and then to resist, this bull. Edward made laws for the Church which hampered its action, and prevented the Pope from getting the dictatorial power which he coveted. We must always remember that it was harder for a king or a nation then to resist papal encroachments than it is now ; for in those days everybody who professed to be a Christian firmly believed that the Pope was God's representative upon earth, as few statesmen, even in Catholic countries, do at the present time. The exact relations of the Church to the Constitution will come more distinctly into view in the next chapter.

20. **Summary.**—The thirteenth century in England, dawning upon a people united on a clearly-defined social principle, and accustomed to a just and firm government, closed upon a people more united than ever upon the same principle, and again under a just, firm, and intelligent government. But the events of the century changed the leadership of the national progress, though not its direction nor its methods. The bad rule of John, bringing with it the loss of Normandy among other things, gave the leadership into the hands of the baronage, a large section of whom were no longer mutinous vassals, but high-souled patriots who had the will and the opportunity to make the cause of England their own. And these

men won for the nation the Great Charter, and fought, through the long years of their own dissensions and Henry III.'s tyrannous fickleness, for its confirmation and fulfilment. The direction of the progress was still, as it had always been, towards the theoretic self-government of the nation. The nation venerated the Pope, the king, and the baronage ; but it was determined that neither Pope, king, nor baronage should tax, judge, or legislate for it without its own consent. And the method of giving consent was the immemorial one—representation. By means of representatives, the nation attended where its interests were concerned, and was a jury, and by-and-by a parliament, according as its needs were. And so, though conflicts with royal, papal, and oligarchic despotisms lay in the future, the nation was in possession of weapons which would make it always victorious, and the stronger for fighting.

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## CHAPTER V

### EDWARD I. AND THE PARLIAMENT. 1295.

1. I MUST now tell you the character of the Great Council as Edward I. left it, that you may see clearly how much the Constitution had grown in the thirteenth century.

2. **Judicature and Legislation.**—We saw that the principal functions of the local assemblies, and even of the *witena-gemot*, were judicial rather than legisla-

*Wit en ag i met*

**tive.** When the witenagemót became the Great Council after the Norman Conquest, it kept its judicial character, and sat most frequently as the Curia Regis, or supreme court of judicature ; while the hundred-courts and county-courts 'declared' the law during their sessions, but did not amend it. There was a two-fold reason for this state of things. In the first place, **it is always the primary duty of governments to make people keep such laws as exist, before they begin to add to their number.** In the second place, the king, especially after the Norman Conquest, became such an important official in the English Constitution, that he was looked upon as the fountain both of law and justice ; and the wonder is, not that the king and the great magnates alone made laws, but that the local courts were able to maintain their judicial powers, notwithstanding the encroachments of the king and the manorial lords. But an obstinately self-governing people like the English must sooner or later have a voice in making new laws to suit the needs of their growth. **And so we shall find that while, as I told you, the Curia Regis split up into the three law courts, King's Bench, Exchequer, and Common Pleas, the national council was reconstituted by Edward I. so that the great body of the people might take part in its deliberations ; and the ancient legislative functions of the shire-assemblies were revived, and exercised under the king's supervision at Westminster.**

**3. Taxation and Representation.**—Another and a more immediate cause of the development of the Great Council in the thirteenth century was the increased



regularity of taxation, and the need, for a self-governing people, of recognised and organised means of resistance to exorbitant demands on the part of the king. In theory, taxes seem to have been always voluntary ; but in practice, the king, before Magna Carta, got what he wanted, and resistance took the form of mere grumbling, which, if it became loud, was liable to be punished as rebellion. Magna Carta, you know, forbade taxation without consent of the Great Council ; and **the Great Council became gradually more and more representative of the classes whose money the king wanted.** For it was a recognised principle henceforward that the nation could be taxed only with its own consent.

4. **The Great Council and the Parliament.**—The witenagemót was a body of wise men who aided the king in his judicial and legislative work, and whose sanction stood for that of the nation. The Great Council of the Norman and early Plantagenet kings was an assembly of tenants-in-chief, while once or twice it seems to have included some vavasors as well. The barons and baronial clergy were summoned individually, while the sheriffs were directed to bring up the knights and smaller tenants-in-chief, **or as many of them as possible.** In 1213, when the barons were taking the reins from John's incapable hands, the Great Council of St. Alban's contained four representatives and the headman from each township, as well as the ordinary collection of landowners (Chap. IV. sec. 7). As the thirteenth century proceeded, and the nation had to fight for the maintenance of the Charter, this **township-represen-**

**tation** in the Great Council was occasional, but not constant. When a crisis was more than usually urgent, and especially when a tax was more than usually unjust, the council was more than usually national. Great Councils then began to be called **Parliaments**.

5. **The Parliament of 1295**, summoned by Edward I. when his kingdom was involved in difficulties, and he needed much money, was almost the same as our parliaments are now ; for the baronial clergy and the magnates—those who had made up the Great Council of former years—attended in full force, and **representatives of the minor clergy**, who had no baronial rank, attended also. **Then the sheriff brought up two knights from each shire to represent the shire**, just as the sheriff nowadays gets county members returned to Parliament. Finally, two citizens came from each city, and two burghers from each burgh ; **so that the Parliament of 1295 represented the nation whom the king wished to tax, and for whom he was about to make laws.**

6. **The Three Estates.**—Let us now look more closely at this wonderful assembly, which had been slowly growing for centuries, but whose sudden perfection we owe to Edward I. When we speak of Parliament now, we think of it as consisting of two chambers—the House of Lords and the House of Commons. But you know that peers—the occupants of the House of Lords—are of two sorts, spiritual and temporal peers ; while the House of Commons consists of representatives of all classes of the people who are supposed to be fit to have the franchise.

The Parliaments of Edward I. were like those of the present day in all these respects, and they contained in addition special representatives of the clergy who were not bishops. So that a true Parliament brings together three classes, or, as they are called, **estates** of people—**clergy, lords, and commons.**

7. **The Clergy.**—Before the Norman Conquest, there had been no difference between the political positions of clergy and laity. The duties and occupations of the clergy were spiritual; but they advised the king as wise magnates, not as clergymen. William the Conqueror, you remember, allowed the clergy to meet in councils of their own; and their separate action in these councils, combined with their separate judicature under the canon law, soon made the clergy feel themselves a separate **estate.** The feeling was increased when Henry II. introduced an income tax, and the clergy had to pay portions of their **spiritual** revenues to the king, while the Pope, with all his spiritual authority, claimed other portions of those revenues. Still, the bishops and other clergy of baronial rank kept their seats in the Great Council **by virtue of their landholding,** while they met in their own councils to attend to their spiritual interests.

Edward I., whose great object was to consult every estate of the people before he taxed it, thought that the consent merely of the baronial clergy sitting in Parliament as landholders did not necessarily imply the consent of the entire clerical estate; and accordingly **he ordered every dean to bring to the Parliament of 1295, representatives—proctors,**

as they were called—of the ordinary parochial clergy, for whom he was responsible. The clergy were also taxed in their own spiritual councils. So that the clerical estate, to which its own nature and circumstances had given a very separate existence, was fully represented in the Parliaments at the close of the thirteenth century, according to the guiding principle of Edward I.'s policy: **What is imposed upon all ought to be allowed of all.**

8. **The Baronage (House of Lords).**—In the Great Council all tenants-in-chief (barons and knights) had a right to attend in person. At the end of the thirteenth century direct vassals of the crown had become so numerous that the exercise of the right was impracticable. Nobility in England had never been defined by *caste*—*i.e.* a baron had always stood before the law *as a man*, and not as a baron. All tenants-in-chief held land on the same principle. What, then, was there to make the baronage an *estate*? In other words, how was the House of Lords created? The answer is: **Edward I. selected a certain number of tenants-in-chief, and summoned them individually to sit in Parliament.** This summons distinguished the selected vassals from all others; and an estate of baronage, a House of Lords, was created at once. The honour and parliamentary position of a summoned lord descended to his eldest son; so the peerage was hereditary from the beginning. The House of Lords, thus constituted, sometimes met by itself, and gave the king advice or aided him in judicature; but its main function was what it still is, to be a companion chamber to the House of

Commons, representing the permanent territorial element in English society.

9. **Knights of the Shire (House of Commons).**—Parliament, as I have hitherto described it, representing two estates, the clergy and the baronage, even though the latter was, so to speak, carved out of the great body of the crown vassals by Edward's summons, does not very materially differ from the Great Council of Henry II., or even the *witena-gemót* of Alfred. It was the attendance of two knights from each shire, two citizens from each city, and two burgesses from each burgh, in the later parliaments of the thirteenth century, that made the **House of Commons**, and gave to the English Constitution nearly its final form. You remember how long shires had been familiar with representation. At the county-courts the headman and four representatives from each township attended, and thus the county-court **represented** the shire. **To get the mind of shires at Westminster, therefore, all that was needed was to secure the presence there of delegates chosen by the county-courts.** And the two knights from each shire in the Parliament of 1295 were such delegates. So that by getting at their mind on taxation or any other important subject, the king got at the mind of the shires by which they were chosen; and shires were thus systematically **represented in Parliament.**

10. **Towns.**—I have not yet said anything of the growth of those important centres of population which we now call towns, partly because they arose much later than hundreds and shires, and partly because, when they became important elements in the nation,

their governing arrangements were so various that it is almost impossible to find a typical civic or municipal constitution. Towns seem to have been of two sorts—**cities** and **boroughs**. People differ even now as to what precisely distinguishes a city from a borough. In England boroughs were much more ancient than cities, and seem to have owed their origin to military necessities (Chap. I. sec. 8). The existence of cities was perhaps determined by the beginning of organised trade; but the whole subject is obscure. However towns originated, their development was certainly caused by the increase of trade and the growth of a class of traders called **merchants**. This class got to be so important that towns demanded and obtained more and more **self-government** as time went on; they had councils and officers of their own independently of the county-court and sheriff of the shire where they happened to be situated. Sometimes the merchants of a particular trade in a town banded themselves together into an association called a **guild**, as members of which they managed their affairs and won a standing ground in relation to other classes and to the king. So the towns gradually disentangled themselves from the machinery of the shires. But though this was the direction of the progress of all cities and boroughs, each one followed it in its own way. In some cases government was carried on by a general assembly of citizens and burghers, as representative as a county-court; in others by an oligarchical corporation. Occasionally a trade guild became a ruling class.

#### II. Burghers and Citizens (House of Com-

mons).—By the middle of the thirteenth century the class of merchants who mainly determined the growth of towns, had become so important that, according to constitutional principles, they, as well as the clergy, the baronage, and the inhabitants of shires, required representation in the national council. Accordingly, the barons, once or twice during Henry III.'s useless reign, and Edward I. regularly, **ordered the sheriffs to bring up, along with two knights of each shire, two citizens of each city, and two burghers of each borough within the shires.** So the freeholders in counties and the inhabitants of towns were put politically on the same footing, and the House of Commons was completed—an assembly representative of the great body of the people. Had this last step not been taken, the merchants might have become a fourth estate.

12. **The Parliament of 1295.**—We are thus brought back to the perfect Parliament of 1295 ; and you understand what is meant when I call it a system of three estates: the clergy present as barons and by representatives; a selected baronage, including prelates, and forming the House of Lords ; and the free communities of counties and towns, from the humblest freeman to the son of a peer, represented by an elected House of Commons. At first the division into two Houses was not marked, but it soon became so. Probably, clergy, lords, and commons consented, or refused to consent, to taxation as **estates**, rather than as **chambers**.

13. **Business of Parliament.**—What did the perfect Parliament do? (1) It heard the royal demands for

money, and acceded to or refused them. (2) It made laws. At first, this part of parliamentary work was done by the House of Lords (clergy and baronage) alone, in conjunction with the king ; but the **consent** of the Commons to legislation was from the beginning technically necessary ; and **by-and-by the Third Estate originated new laws, by suggesting and demanding them.** (3) It tried a few king's suits. This fragment of parliamentary judicature was exercised by the House of Lords only. (4) It advised the king on matters of foreign policy. In this department the right of the Commons, though it existed, was seldom exercised.

14. **Summary.**—In the reign of Edward I., and in the year 1295, an assembly met at Westminster having the right to pay or refuse taxes, to make laws, and to advise the king. It consisted of representatives of the clergy ; a House of hereditary Peers ; and a House of Commons, representative not only of the trading inhabitants of towns, but of all freeholders in counties also. So that out of the bitter struggle of the thirteenth century the nation had emerged with its ideal of theoretic self-government by means of representation realised ; the perfect form being wrought by a king so able and patriotic that the royal and national interests were made almost entirely identical ; while to the barons, the great feudal magnates, was assigned a special place in the Constitution which the social system of the Middle Age made a necessity, and their services to the nation made a fitting reward.



## CHAPTER VI.

THE FOURTEENTH CENTURY AND THE TWO  
DETHRONED KINGS.

1. **The Empire of England.**—Edward I. was not solely occupied in perfecting the Constitution. During his reign Wales was entirely, and Scotland was partially, brought under English rule; while the authority which Henry II. had introduced into Ireland, such as it was, was maintained, at least in name. So that at the death of Edward I. there was something like a kingdom or an empire of **Great Britain and Ireland**; though Scotland was to have separate kings for 300 years, and many centuries of bitterness were to pass before the conquest of Ireland was completed. This is a convenient place to say what is necessary about the progress of Scotland, Ireland, and Wales, during the period we have been traversing.

2. **Scotland.**—You remember that when the English tribes had driven back the Celts and got firmly settled in Britain, they occupied what we now call the south-east of Scotland as well as the greater part of England (Chap. I. sec. 3.) Their northern boundary, in fact, was, roughly speaking, the line of the Firth of Forth. The province between the Humber and the Forth, called **Northumbria**, was as English as Kent; and Edinburgh was founded by the English king Edwin. In the region between the

estuaries of the Dee and the Clyde, the Celts kept their hold for some time ; and, under the names of **Cumbria** and **Strathclyde**, it withstood English colonisation. But, ere long, what we now call Lancashire, Westmoreland, and Cumberland, were annexed to England ; and the northern portion of Cumbria, between the Firths of Solway and Clyde, though it had its own king, was compelled to acknowledge the English superiority or 'over-lordship.' To the north of the Forth and the Clyde the English neither conquered nor colonised. For a long time the **Picts**, the Celts of the region, held sway there ; but about 850 a tribe who had crossed from Ireland long before, and lived in what is now the south of Argyllshire, called the **Scots**, rose and defeated the Picts. From this time the Scots took the lead in North Britain, though they mixed freely with the other inhabitants, instead of trying to exterminate them. After a time they won back the portion of Northumbria between the Forth and the Tweed, as well as Cumbria, though they held them **as vassals of the King of England**. By the middle of the twelfth century **the King of the Scots ruled over Scotland**, bounded as it is now, though he did homage for the southern half of it. For a long time the external history of Scotland is made up of attempts on the part of the kings to shake off the English over-lordship, and sometimes even to win the English crown, met by efforts on the part of the English to turn their suzerainty into sovereignty. As the Scotch and English royal houses several times intermarried, the relations between the countries were complicated by domestic considerations. In the reign

of Edward I. there were many competitors for the Scottish throne. The judgment of Edward, as overlord, was sought, and he decided in favour of one of the claimants, John Balliol. But Balliol revolted, and Edward took the opportunity of invading Scotland. A long contest was waged ; but when Edward died, the over-lordship of England was more firmly established than ever ; and Balliol received **the whole kingdom** as a fief of the English crown.

The close relations between the two countries, and the Norman and English blood of many of the Scotch kings, made the early governing arrangements in Scotland very similar to those in England. But the absence of the English popular assemblies from the greater part of Scotland prevented the early growth of **self-government** ; and thus the Anglo-Norman Constitution was much more despotic and oligarchic in Scotland than it ever was in England. The feudal lords had great power, and they used it harshly. There was a Parliament, but it did not contain any representatives of the Third Estate till 1326—*i.e.* considerably later than the point we have reached ; and full representation (of counties and boroughs) was not attained till 1587. The inhabitants of North Britain had received Christianity very early ; and their church was a branch of the Latin Church, having close relations to the centre at Rome. The judicial and military systems were feudal, and so like those in England that they do not require separate description. Points of difference and the further progress of the Scottish Constitution I will note as I proceed.

3. **Ireland.**—The original Celtic inhabitants of

Ireland seem to have had more of a Constitution than their kindred in England and Scotland ; at all events, their primitive customs and arrangements are better known to us. The country was divided into five provinces, each of which had a king. Under the kings were chieftains and judges, who administered the traditional or **Brehon** laws. Society was organised (if it could be said to be organised) on principles which were in many respects feudal, but which contained elements hardly feudal—especially an approach to the recognition of merit and equality, at least in families. But the government, whatever germs of good it may have possessed, was not efficient. In the middle of the twelfth century the country was sunk in barbarism. There was a Christian church, which had flourished while England was still heathen ; but its influence was gone. Those irrepressible adventurers, the Danes, had carried their conquests as far as the eastern coast of Ireland, and there they founded cities, such as Dublin and Waterford. But their rule was confined to these coast towns. They neither mixed with the Irish nor subdued them ; they merely cut them off from the seaboard, and drove them to sullen isolation among their morasses, with the seeds of deadly enmity to the German races sown in their hearts. Henry II. resolved to conquer Ireland, ostensibly that he might check vice and introduce good government. Unfortunately, circumstances prevented him from doing the work thoroughly himself, and he left it to be done partially by a few of his barons. The result was that, after some fighting, English baronial families quartered themselves in the greater part of

the country, ruling the natives manorially and feudally. Most of the native kings were obliged to acknowledge Henry's over-lordship ; but English rule hardly extended beyond the line of the eastern and south-eastern coast. In this region the way had been prepared by the Danes, who now merged themselves in the mass of the English immigrants. The object of Henry and his successors in regard to Ireland was henceforward to introduce English governing arrangements into those maritime counties, called **the Pale**, where their authority really held. English law was domesticated ; the benefits of Magna Carta were made to apply to Ireland as well as to England ; an Irish Parliament was set up, and it included **representatives** almost as soon as the English one. But people cannot be well governed if they are not living happily together ; in other words, **social** must always precede **political** prosperity. The English never mixed with the Irish, as the Normans soon did with the old English, so as to unite the races, preserving at the same time what was valuable in the customs of each. The barons at first ruled their Irish dependents with harshness and injustice. As years went on their successors sank to the depressed level of Celtic civilisation. In the beginning of the fourteenth century there were in Ireland an aristocracy of English origin who had been oppressors, and who were now barbarians ; a Constitution whose workings were confined to the district near Dublin ; and two races, alien in blood, who could neither believe in, govern, nor exterminate one another. So that, though Edward I. died over-lord of Ireland as well as of

Scotland, he could not be said to *rule* either the one country or the other.

4. **Wales.**—The conquest of Wales, unlike those of Ireland and Scotland, was complete and final. The Celts, who had been driven westward by the waves of German conquest, were gradually compressed into ever smaller space. It was absurd for such a people to hope for independence of their great and ambitious English neighbours, even though different blood flowed in their veins. Yet it took much fighting to establish even English over-lordship in Wales. Like other Celtic races, the Welsh had much poetry and sentiment; and the great object of their poets was to stir the people to resistance to the English. Over-lordship was changed into direct rule by Edward I. in 1272; the last Welsh prince, Llewellyn-ap-Griffith, was slain; and Edward's eldest son got the title of Prince of Wales, which has ever since been held by the heir-apparent of the British crown. Treated as a part of England, Wales shared the benefits of the constitutional system which Edward I. was perfecting.

5. **Edward II.**, who succeeded his father in 1307, was thus sovereign of a very considerable empire in Great Britain and Ireland, and he presided over a Constitution on the whole, perhaps, the best the world had or has ever seen. But both in the external and internal affairs of his kingdom trouble was near. In the first place, although Edward I. had established the English over-lordship of Scotland, the Scotch were keenly anxious to regain independence; and in 1306, under their new and patriotic king,

Robert Bruce, they broke into revolt. This was a year before Edward I.'s death ; so his son inherited a Scotch war, and when he began to reign it was still raging. In respect to the Constitution, the aspect in which he most interests us, Edward II. was equally unfortunate. He was not a good man, and he wasted the ability he shared with all his family on unworthy objects. He was fond of foreigners ; and he liked to make pets of a few favourites, and give them places in the state to which constitutional arrangements hardly entitled them.

6. **The Ordainers and Ordinances.**—One of these foreign favourites, **Piers Gaveston**, made himself so obnoxious to the nation that the barons, **who were still the leaders of progress**, resolved to take active measures. They had many things to complain of—illegal taxation, a debased currency, &c. ; but the root of all the mischief they considered to be the tyranny of the favourites, whom Edward made his Ministers. **So in 1310 they got the king to vest all rule for more than a year in a committee of twenty-one barons, led by the Earl of Lancaster**, an ambitious cousin of Edward's. The members of this committee were called **Ordainers**, and they drew up a series of **Ordinances**, which the king swore to observe. The Ordinance provided, amongst other things, for the banishment of Gaveston, and the election by Parliament of the king's Council of Ministers. But this arrangement brought no real amelioration. Edward returned to power, recalled his favourites, and broke the Ordinances. Another Barons' War seemed at hand. The blood of individuals began to be shed.

Lancaster killed Gaveston ; the king killed Lancaster.

**7. Deposition of Edward II.**—Had Lancaster been a Simon de Montfort, and led a united baronage at the head of a united people, Edward II. might have been brought to concession, as his father and grandfather were. But a century had seen great changes ; and none of those conditions were realised. Lancaster was an unscrupulous man. The peerage was divided. It is probable that neither king nor barons thoroughly understood the Constitution. Perhaps Edward I. himself hardly understood it. The Ordainers were an oligarchy, and the Commons were becoming jealous of their power. Lancaster, they justly felt, was as dangerous as Edward or his favourites. There was thus a want of unity of design in national action. The time was come for the Third Estate to rouse itself, and save the country. **In 1322 an important Parliament was held at York, which repealed the Ordinances as the work of an oligarchy ; and passed a most important statute, to the effect that legislative measures, whether affecting king or people, should henceforth be invalid without the consent of the Commons.** You will see at once that this statute marks a great advance in the direction of theoretic self-government, the goal of all British constitutional progress. But the conduct of the king was a source of growing disquiet. Edward's love of favourites continued ; two men, a father and a son, called Despensers, had taken Gaveston's place, and, though they were not so worthless as he, they were felt to stand between the king and the nation.



The English were worsted in the war with Bruce of Scotland. All classes of the people were disaffected and dissatisfied. Edward's queen, Isabella, was the sister of Philip of France, and Edward was still duke of certain portions of French territory. But Isabella was a bad, faithless woman ; and, instead of inciting her husband to good courses, she stirred up disagreement between the English and French courts, and constituted herself the unworthy leader of the national opposition to the king. When Edward found that his wife had turned against him, and that there was a French plot to destroy his favourites, and possibly himself, he fled towards Ireland, but was taken captive before reaching the Channel. This was in the end of 1326. In January 1327, a full Parliament met, and formally deposed Edward II. on the ground that, by breaking his coronation oath, allowing the empire to be lessened, leaning on favourites, and governing unjustly, he had forfeited his right to be king. He was then forced to abdicate ; and in a few months he was murdered.

**8. Plantagenet Kingship.**—In thus deliberately dethroning an anointed king, Parliament took a very bold step, and one for which there was no precedent since the Norman Conquest, and only one or two before it. We are not concerned here to inquire whether, in the case of Edward II., it was just or unjust. What interests us is the fact that Parliament took the step, and dared to take it. What, then, was an English king in the fourteenth century? Just what he was in the eighth century—the highest officer in the nation, and representative of its dignity and

unity, belonging, if possible, to one particular family ; always elected by the nation, and liable to be set aside by the nation, if he failed to satisfy the national requirements. Before the Norman Conquest the election was made by the *witena-gemót*, which, as you know, was held to represent the nation, though it did not really do so. After the Norman Conquest, feudalism made the king supreme proprietor of the land ; and, as succession to landed property was hereditary, there was a risk of the hereditary element in English kingship, which had always existed, becoming so prominent as to obscure the elective element, especially as the Great Council, which made the election, was an assembly of tenants-in-chief. But for a long time after the Conquest each king had to make good his title in the face of the nation against other competitors ; and then election was a necessity. After the time of Henry III. the Plantagenet line was so firmly established that smooth and regular succession was the rule. Singularly enough, Edward II. succeeded without the process of election, which had come to be regarded as a mere formality, being gone through. But his misgovernment, as we see, afforded a pretext to Parliament for exercising a right which had never been lost. The king was the nation's servant ; and Parliamentary consent was a much more national act in the fourteenth than in the eighth century, inasmuch as Parliament was actually a national assembly, while the *witena-gemót* and Great Council only counted as such. So it was the good fortune of England, at a time when kings necessarily had much power and standing, to be enabled by

circumstances to show the position of her highest officer in a light where it would be difficult henceforth to misunderstand it.

9. **Edward III. and France.**—When Edward II. was deposed, his son, a boy of fifteen, succeeded at once as Edward III. During his minority, his mother, Queen Isabella, and an unprincipled Minister named Mortimer, acted as his guardians, and took more upon them than was good for the country. In 1330 he took the reins of government into his own hand, slew Mortimer, and banished his mother. His long reign (1330–1377) was a brilliant and stirring one; but its main interests belong to the general rather than the constitutional history of England. Such growth in social and political arrangements as took place during its course shall be noticed by-and-by. As to the external history, it is sufficient for you to know that in 1337 Edward III. declared war against Philip VI. of France on the ground that he (Edward) had the right to the French crown as the son of Philip IV.'s daughter. The claim was a bad one; for the French law did not allow a woman or any of her children to succeed to the throne. But groundless as the war was, it went on, with brief intervals, for about 100 years, and was conducted with much bravery on the part of the English. At first Edward was successful; the great victories of Crecy and Poitiers were won; and in 1360, John of France, who had succeeded Philip VI. on his death, was glad to conclude the peace of Brétigny, by which Edward was declared sovereign of the whole of the western provinces of France, from Brittany to the frontier of

Spain, as well as of the town of Calais, on the English Channel. But the war soon broke out again, and this time the tide turned against Edward. A new and able king, Charles V., was on the French throne ; and he fought irresistibly to recover his possessions. Edward lost his brave son, the Black Prince, who had won many victories for him ; and when he died, in 1377, England had lost everything in France except the three towns of Bordeaux, Bayonne, and Calais. Besides contending with France, Edward spent much blood and money in attempting to maintain the English over-lordship of Scotland, which the Scotch were not willing to submit to on any terms. As in France, so in Scotland, Edward was at first successful, and then unfortunate. For a time he remained over-lord of the south of Scotland ; but when the French war obliged him to remove his soldiers, David II. of Scotland roused himself and expelled Edward's creature, Balliol, becoming thus independent king of all Scotland. From this time Scotland helped France rather than England.

10. **Richard II.**, grandson of Edward III., succeeded him and reigned for twenty-two years. This period is full of deep interest for the student of social and constitutional history, as we shall see presently. Externally the reign was uneventful. Richard made an expedition to Ireland, which brought about no lasting improvement in the state of matters there. He was a very high-spirited and ambitious man ; and his great object was to govern without control of Parliament—*i.e.* against the nation's will. Of course this

was intolerable ; and a more serious offence than even Edward II.'s incapacity. Parliament was again forced to take the high hand ; and in 1399 Richard II. was solemnly dethroned.

**II. English Society in the Fourteenth Century :**

(1) **The Merchants.**—I must now sketch the social and political changes which made the constitutional growth during the reigns of the fourteenth century. In very primitive times the occupations of a people are almost exclusively connected with the cultivation of the soil ; and thus early wealth is agricultural, and society is founded on an agricultural basis. The classification in Chap. II. sec. 6, is tolerably exhaustive of English society after the settlement of the Normans ; and, if you look back to it, you will see that every class has some direct relation to landholding. But, as agriculture progresses and time goes on, it becomes necessary to send out or **export** the choice and surplus produce of the soil, and to bring in or **import** the productions of other countries ; and thus **trade** springs into existence. This was what happened largely in England after the Norman Conquest ; and thus a **class of traders** grew up in the nation, who were either merchants, who bought and sold, or manufacturers, who wove natural products into fabrics ; and thus the wealth of the country was largely increased. The traders naturally lived together ; and their necessities, more than any other cause, account for the progress of towns. The increase of merchants and the growth of trade went on very gradually. Almost all the kings were favourable to commerce from various motives. Magna Carta

ordains freedom of trade. Edward III. himself exported wool. *How trade affected taxation* you shall hear presently ; meanwhile I want you to remember that in the fourteenth century there was this large class of merchants, mainly inhabiting the towns, which had grown up apart from the agricultural classes, side by side with barons, knights, socmen, villeins, &c.

(2) **The Tenant Farmers and Free Labourers.**— But in the midst of the agricultural and feudal classes themselves new classes were developing, which enormously altered social conditions, and afterwards, as is always the case, governing arrangements also. If you turn again to Chap. II. sec. 6, you will see that all the persons mentioned there, except the serfs, are called **tenants**, in relation to the land they held. The king, you must always bear in mind, was the proprietor of all the land in the country ; and the most important **baron**, the greatest manorial lord, **held his land conditionally upon certain services rendered and certain payments made to him**. On the other hand, the most insignificant villein, who lived as a peasant, and did the work of an agricultural labourer, had, generally speaking, a permanent interest in his cottage and scrap of land ; and, so long as he worked for his master, he was never dispossessed. So that when feudalism was in its full strength in England, every dweller in the country, from the baron to the peasant, except the slave, was in one sense a tenant, and in another a proprietor. *In theory, all ownership, except that of the king, was tenancy ; in practice, all tenancy was ownership.* Between the twelfth and fourteenth centuries this system had been slowly changing, owing to the

action of two causes. In the first place, many of the more considerable villeins and smaller socmen had land let to them by the manorial lords, on condition solely of payment either in kind or money. In modern language, **a class of tenant-farmers was growing up, who rented the lands they occupied, and who owned no feudal services to their landlords.** They were generally men of capital, and were really in a better position than the old socmen, whose proprietorship was burdened with feudal obligations. In the second place, the lower class of villeins, who owned their cottages indeed, but only so long as they worked on their masters' fields, and were often very much oppressed, **were demanding, and slowly obtaining, the right of hiring out their labour where they could get highest wages.** Sometimes they were obliged to flee to towns ; sometimes the clergy mediated between labourer and master ; very often the lords sold freedom to their villeins. Both these movements tended to break the crust of society in the Middle Age, and to substitute commercial for feudal relations between man and man. The best policy for proprietors was to favour this struggle for free labour. Towards the end of the fourteenth century they began to regret their concessions, and to try to force the labourers back to their subjection. The result was an armed uprising of the class, called the Peasants' Revolt, in 1381, which it took all the vigour and tact of the young king, Richard II., to suppress.

## 12. Government in the Fourteenth Century :

(1) **The King.**—Although Parliament deposed kings on two great occasions in the fourteenth century, the

royal position was a very distinguished one, and implied many important privileges or **prerogatives**. As these prerogatives were seldom written down and clearly understood, kings were very apt to abuse them ; and a great part of political progress in England has been produced by a constant friction on this matter between the Commons and the Crown ; the Peerage sometimes inclining towards the one side, and sometimes towards the other. The systematic representation of the Commons brought about by the reforms of Edward I., and the invariable co-operation of shire and borough members, enabled the Third Estate to guard the national interests with efficiency. The royal prerogative was exercised chiefly in the departments of taxation, legislation, and executive. The king was entitled to 'live of his own,' and to tax the nation that he might do so ; it was the business of the nation to make sure that no tax was levied without its own consent. Again, the king had a right to initiate legislation, and to withhold consent from legislation desired by Parliament ; and such a right, it is evident, might be used to the people's hurt. Lastly, **the supreme royal prerogative was ultimate executive authority**,—the right of carrying into effect, in the last resort, the existing laws. The king had, in theory, **the generalship of the army** and the right of decision between peace and war ; he was the 'fount of justice,' and thus all judicature was supposed to be derived from him. In his **Council of Ministers** (of which you shall hear more in the next chapter) he had a right, not very clearly defined, of issuing temporary enactments in reference to executive matters,



called **ordinances**. These ordinances were sometimes either unjust from the beginning or apt to remain in force too long, and to conflict with the permanent legislative enactments authorised by Parliament and king, called **statutes**; and so the nation had many possible reasons for resistance. Besides these important prerogatives, the king had the privileges, pecuniary and social, which necessarily belonged to the supreme landed proprietor.

(2.) **The Parliament.**—No change in the construction of the great national assembly was made in the fourteenth century. All parliamentary progress was in the direction of finding enlarged scope and defined sphere for an institution which had been left practically perfect by Edward I. The progress was secured, as I hinted, by the constant friction between the Commons and the Crown on the exercise of the prerogative. The House of Lords, representing clergy and peerage, was not able to take the lead as the baronage had done since the death of Henry II.; for the peers were divided, and the clergy were prevented from being patriots by their allegiance to the Pope. So the House of Commons quietly took its place; and the **history of Parliament in the fourteenth century is the history of the establishment of the control of the House of Commons**. In 1322 the great principle was made good, that the consent of the Commons was necessary before any statute became law of the land. That was during the reign of Edward II. Edward III., in order to carry on the French war, required much money, and he often tried to raise it by illegal taxation; but always, and each time more effectively, the

Commons demanded that their permission should be formally sought. When Edward III. died, in 1377, we may say that the taxation clauses of Magna Carta were the bases of all financial transactions between the king and the nation. Two important points were gained by the Commons during the fourteenth century. In the first place, on important occasions they succeeded in **appropriating the supplies**; *i.e.* dictating the use to be made of particular sums granted by them. Secondly, by the end of Richard II.'s reign it had become an invariable practice for a committee of public servants to furnish to each Parliament an **audit of accounts** during the preceding one. Besides thus acquiring a recognised voice in legislation and a virtual control of taxation, the House of Commons in the fourteenth century frequently **advised on questions of foreign policy**, and even **impeached ministers whose conduct was not thought satisfactory**.

13. **Taxation in the Fourteenth Century** began to be considerably changed. The taxes, of which you have already heard, may be divided into two classes: (1) Land taxes; and (2) Fractions of personal estate. Of the former class, the feudal payments were the condition of landholding, and outside parliamentary control. Scutage, carucage, and **tallage**, or the tax levied on the king's own demesne lands and boroughs, were looked upon by Parliament with growing distrust and dislike; because the kings were apt to levy them suddenly in great emergencies, although it was perhaps hardly illegal for the king, as a landlord, to tax or 'tallage' his own lands. The great principle of self-

taxation was opposed to the spirit of the old land taxes ; and thus, though each of the three Edwards levied a tallage, they all met with much resistance ; and from 1348 onwards, we hear no more of scutage, tallage, or carucage. Taxation of personal property or 'movables' began in the time of Henry II., and continued throughout the thirteenth and fourteenth centuries, subject always to the control of Parliament. All these taxes were *direct* ; i.e. paid by the persons intended to make the sacrifice. But from very early times, merchants who followed a particular trade had observed the 'custom' of giving the king a certain fraction of their exports and imports as a toll or licence ; and this custom gradually grew into a system of *indirect* taxation, called then, as it is called still, so far at least as imports are concerned, the **customs**. For example, if a ship arrived with twenty casks of wine at 20s. the cask, the king was entitled to two casks, the rate of custom being one in every ten. The merchant was then understood to charge proportionally higher for the taxed commodity. You will see at once that by means of these duties on merchandise kings could immensely add to their revenue ; and as the duties were 'customary,' they were beyond parliamentary regulation. Edward III. raised money for his costly wars by largely taxing the flourishing trades, and especially the wool trade, of his reign ; and the House of Commons made strenuous efforts to acquire the control of the customs, as they already possessed that of the other taxes. Much effort was needed, for the king did not hesitate to break his promises when money was concerned. But just before

the death of Edward III. the point was gained, and all taxation of merchandise unauthorised by Parliament was declared illegal.

14. **Judicature in the Fourteenth Century : Chancery.**—In Chapter IV. section 17, I described the judicial system as Edward I. left it. Little change took place in the reigns of his son and grandson. But the office of the **Justiciar**—who, you remember, was the most important of the king's ministers under the Norman and early Plantagenet kings—ceased in the time of Edward I. ; and thenceforward the **Chancellor** was the foremost minister of state. Chancellors in early times were always clergymen ; their business was financial, and they always followed the king. In the fourteenth century they began to live permanently in London, and, as the king's first ministers, to hear suits 'in matters of grace and favour,' which used to be addressed to the king's ear. The jurisdiction thus acquired by the chancellors gradually expanded into the system we now call **Chancery**. The business of the chancellor thus became legal, not financial ; and by-and-by laymen with legal knowledge were appointed to the office, rather than clergymen.

15. **Justices of the Peace** come distinctly into view at the beginning of Edward III.'s reign. As early as Richard I. there was an institution of two sworn knights in each county, to keep the peace. The conservators and justices of the fourteenth century were 'assigned' or nominated by the king.

16. **The Church in the Fourteenth Century.**—Edward I. had gained considerable independence for the Church of England as the result of his struggle with

the imperious Boniface VIII. But the Popes still had much power, chiefly of two sorts. (1) They claimed the right of presentation to vacant bishoprics and benefices. This right had been originally exercised, in the case of bishoprics, by the **chapters**, or bodies of clergy connected with cathedrals ; and in the case of benefices, by the king. The papal exercise of the right was a serious grievance, for the Popes almost always appointed foreigners, and thus the Church of England more and more lost its national character. Foreign bishops especially, sitting in the House of Lords and governing the country, were apt to serve the cause of the country's enemies. Several efforts were made to prevent papal patronage, and they culminated in the great **Statute of Provisors**, enacted by Edward III. in 1351. This Act asserted the rights of presentation and patronage as belonging to the king ; and condemned all papal nominees to imprisonment. (2) The Popes claimed a large jurisdiction over the English hierarchy ; and excommunications of bishops were common by the authority of bulls, which the English were unwilling to accept. Against this grievance, too, there was much ineffective legislation ; until, in 1393, in the reign of Richard II., Parliament passed the **Statute of Premunire**, which forbade the trial of any ecclesiastical suit affecting the rights of the Crown by a Roman court. By these two great statutes the nationality of the church was preserved ; and the way was in some measure prepared for the great ecclesiastical changes which were to happen in little more than a century. The Popes were not now so strong as they had been : they were in subjection

to the kings of France, who were despotic secular potentates.

**17. Wycliffe and the Lollards.**—Towards the end of the fourteenth century an eminent scholar of Oxford, named John Wycliffe, began to denounce the corruptions of the clergy, and especially of the friars, the principal preaching order of the time. He translated the Bible, and proclaimed a message so simple, so free of the complicated doctrinal system of the Roman Catholic Church, that his teaching was regarded as dangerous heresy, and he got into disfavour at headquarters both in London and Rome. Whatever were the merits of Wycliffe's doctrines, they appeared at a bad time in the church's history to win the day, and they unquestionably fell in with the levelling social movement which led to the Peasants' Revolt in 1381. Loyalty and orthodoxy seemed to go together, and Wycliffe's followers, the Lollards, were looked on as a swarm of communists, to be destroyed in the king's name. Still, though the hold of the papacy was hardly relaxed, we, who look back from a distance of five centuries, see in the ecclesiastical legislation of Edward III. and Richard II., and in the rise of Lollardy, an unmistakable foreshadowing of the Reformation.

**18. Summary.**—Edward I. had conquered Wales and asserted a disputed over-lordship of Scotland; and thus Edward II. succeeded to a sort of empire of Great Britain and Ireland—English authority after a fashion having been maintained in Ireland since the reign of Henry II. It did not keep together well, for under Edward II. and Edward III. Scotland was

constantly trying to become independent, and twice she succeeded. She allied herself with France, with which Edward III. entered on a bloody and useless war. So far as the Constitution was concerned, the fourteenth century was a period of steady progress. The Parliament, perfected by Edward I., ruled the country, and showed its sovereignty by twice setting aside a king—once for incapacity, and once for despotism. The Commons led the Parliament; acquired, after a long struggle, the command of both direct and indirect taxation; and dictated how money was to be spent. They also claimed and exercised the right of impeaching ministers when they deemed it necessary. Judicature was enlarged by the establishment of Chancery; while the three courts into which the old Curia Regis had separated continued alongside of it, and by means of the circuit system brought their action to bear upon the persisting local courts. The English Church was still a branch of the great Latin or Roman Catholic Church, and acknowledged the spiritual headship of the Pope; but a great deal of independence was won by Parliament for the clergy, while the teaching of Wycliffe accustomed the minds of Englishmen to believe in the Bible by itself, rather than as guarded and interpreted by the priesthood.

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## CHAPTER VII.

## THE FIFTEENTH CENTURY AND THE PRIVY COUNCIL.

1. **The Reign of Henry IV. (1399-1413).**—When Parliament set aside Richard II., it unanimously chose **his first cousin, Henry of Lancaster**, to succeed him. As Henry had a personal grudge against Richard, having been banished the kingdom for a supposed offence, his ambition and revenge both were satisfied by the invitation to return to England and the offer of the crown. He ascended the throne in 1399, **with the full sanction of the nation in Parliament.**

The great object of Henry IV. was to govern as a constitutional king ought to govern—in harmony with the will of the Parliament which had elected him. The royal and national policies were thus in the main identical. Lollardy still existed, and both king and Parliament regarded it as a heresy, dangerous alike to Church and State. Henry therefore set himself to suppress it. In 1401 was passed the memorable **Statute concerning the Burning of Heretics**, by which bishops were empowered to seize all persons suspected of holding heterodox opinions, and, if they failed to retract, to hand them over to the civil power to be burned. One or two victims perished at the stake, but the heresy lingered on. Though Henry enjoyed the confidence of Parliament as a whole, his reign was troubled by revolts. Wales, which had been tranquil for more than a century,



rose under Owen Glendower, and was only subdued after a hard struggle. Scotland kept up her disaffection. The peers, from among whom Henry of Lancaster had been somewhat arbitrarily chosen for the succession, began to be torn by jealousy of the king and hatred of one another. The Earl of Northumberland openly revolted. In a few years the Lollards held up their heads once more, under the leadership of Sir John Oldcastle. Henry died in 1413, with gloomy thoughts about his kingdom and the future of his house.

2. **The Reign of Henry V. (1413-1422).**—The son of Henry IV. succeeded him as Henry V. He was a brave, intolerant man, and the policy he pursued gave him ample opportunities of showing both bravery and intolerance. Lollardy was at last suppressed, and Oldcastle, with thirty-nine others, was executed. Henry was eager to renew the war with France; indeed, on no other terms could he secure the allegiance of the peers. He accordingly claimed the French crown, as Edward III. had done, but with much less reason, and invaded Normandy in 1415. He won the battle of Agincourt, and in a year or two annexed Normandy. The French king, Charles VI., was insane, and the French vassalage was divided. Henry therefore found little difficulty in pushing his conquests, and in 1420, by the Treaty of Troyes, he was proclaimed joint-king of France. He died in 1422, before he had time to enjoy the great military position and reputation he had won.

3. **Reign of Henry VI.**—Henry VI. was an infant of nine months when his father died. He was for-

mally crowned king of England and joint-king of France ; but government was, of course, exercised by the ministers, and chiefly by the king's two uncles, the Dukes of Gloucester and Bedford. The dominion in France, which Henry V. had spent so much blood and treasure to secure, was gradually lost. Joan of Arc, the heroic maid of whom you read in books on English history, by her great personal influence, roused the French to rally to the joint-king, Charles VII., and to cast off the English yoke. Slowly but steadily the nation caught the fire of the virgin warrior, and bit by bit the soldiers of Charles VII. won back France. At last even Guienne, which had been in English hands since the days of Henry II., whose queen's appanage it was, surrendered to Charles VII. In 1451 the war, which had lasted for more than 100 years, came to an end, and the only English possession in France henceforward was the town of Calais. Henry VI. was as unfortunate in his government at home as in his campaigns abroad. His minority lasted till 1442, and Gloucester and the other peers who exercised the government were men from whom all the patriotism of the old English baronage seemed to have departed, and who worked for their own selfish ends. Henry's coming of age did nothing to mend matters : he was a weak though well-meaning man, and he was liable to frequent attacks of insanity. Necessarily, therefore, his unscrupulous ministers, hateful and hating one another, continued to possess great power. The loss of the French territory chagrined the nation. A king feeble and often mad, a council divided against itself, and a

people indignant at want of governance, afford a great opportunity for a clever usurper to come forward and play the part of a deliverer. And in England there was such a man to take advantage of the circumstances. **The Duke of York** was a descendant of Lionel of Clarence, one of the sons of Edward III. He claimed to be heir-presumptive to the throne, and got himself appointed Lord Protector during one of Henry's serious illnesses in 1455. Then a son was born to Henry, who had married Margaret of Anjou. There was thus an heir-apparent, and York's first plea for prominence was lost. But he soon found another. The House of Lancaster was descended from **John of Gaunt**, a son of Edward III., but a younger son than **Lionel of Clarence**. York maintained, therefore, that he, as representing an *elder* branch, was the true heir to the English crown, and that the Lancastrian rule was illegal. This plea had no real force in England, because, as you know, **parliamentary sanction always and solely constituted a royal title**. But York's claim, which we should now call a *legitimist* claim, pleased the Parliament of the day, and York had won the confidence and even the affection of large classes of the people, especially the mercantile class, whose discontent with Lancastrian misgovernment had burst into revolt. York's prospects were thus good. Parliament, though refusing to dethrone Henry VI., settled the succession on York.

4. **The Wars of the Roses.**—Meanwhile civil war broke out. York had the largest and most influential part of the nation on his side ; but of course Henry

and Margaret had a following, and it was not to be supposed they would give way without a struggle. The bitter mutual antipathies of the peerage were now translated into bloodshed. Several great battles were fought, in which the Yorkists were always successful, and as a result Parliament yielded to the circumstances created by war, deposed Henry VI., and proclaimed the Duke of York as **Edward IV.** in 1461. But the civil war went on, kept up chiefly by Margaret and the Earl of Warwick, whom personal motives alienated from the Yorkist side. Lancastrians and Yorkists were called respectively the 'Red' and 'White' Rose, from the badges they wore. At one time fortune deserted Edward, and he had to flee the country. But he returned, claiming nothing, and at last getting back everything. The savage battles of Barnet and Tewkesbury gave final victory to the White Rose, and Edward IV. was reinstated on the throne.

5. **The House of York (1471-1485).**—After this **Edward IV.** reigned for twelve years. His rule was stronger than that of the House of Lancaster, but it was much less constitutional. Parliament was seldom called together ; the ranks of the peerage had been so seriously thinned by the slaughter of the civil war, that there was hardly a House of Lords ; and various causes, of which you shall hear presently, had crushed and dispirited the House of Commons. So the nation was scarcely fit to exercise the self-government which it had won, and **almost irresponsible power was in the hands of the king.** Edward IV. maintained his popularity, and thus the want of self-

government was not very acutely felt during his lifetime. When he died in 1483, his son **Edward V.** succeeded him ; but he was a mere boy, and needed a protector. Richard, Duke of Gloucester, a younger brother of Edward IV., got himself made Protector ; and soon after, bringing a charge of illegitimacy against his nephew, he induced Parliament to set aside Edward V., and crown him as **Richard III.** He reigned for two years, and made great show of ruling constitutionally ; but his throne was really set up in blood. Edward V. and his brother passed out of life so mysteriously that their deaths have always been attributed to their uncle. By the remnant of the peerage Richard was hated. A sort of Lancastrian enthusiasm revived ; and a representative of the line of John of Gaunt was found in **Henry Tudor**, Earl of Richmond, whose mother was illegitimately descended from Gaunt. The illegitimacy was overlooked. Henry agreed to marry Elizabeth, eldest daughter of Edward IV. ; and he was thus in a position to embody and champion the hatred of Richard felt by both sections of the nation. He collected a force in the west ; marched eastward, and met the royal army at Bosworth Field, in Leicestershire. Richard was defeated and killed ; and Richmond at once succeeded as **Henry VII.** in 1485. The great House of Anjou or Plantagenet, of which Henry II. was the first English king, was now really at an end ; and the line of **Tudor** was in possession of the throne.

6. **English Society in the Fifteenth Century.**—I have thus rapidly sketched the external history of the fifteenth century, and I must now tell you about such

changes in social and political arrangements as took place between the accession of Henry IV. and that of Henry VII. The time was not a happy or prosperous one for the people of England. There was a great deal of poverty and wretchedness among the lower classes, and of senseless extravagance and luxury among the upper classes. The police system was singularly weak, and crime and lawlessness had things too much their own way. The Lancastrian kings and their Parliaments generally agreed ; but they seemed quite unable to make and keep the mass of the people happy. Edward IV. dispensed with Parliaments, and the people had not sufficient spirit to insist on their being assembled. The church had lost influence, while it maintained power. The peerage was weakened by internal jealousy at the beginning of the century, and consumed by civil war at the end of it. The cause of all this was that **feudalism**, which had bound together English society since the Norman Conquest, was gradually losing its force. Everything in feudalism centred in landholding ; power, wealth, and social value belonged to men as **landlords**, and the practices, first of hereditary succession, and then of **primogeniture**, or the succession of the eldest son to the exclusion of other members of the family, tended to confine this power and influence to particular channels. But the steady increase of trade throughout the Middle Age had introduced into English society the *mercantile idea*, which, associating power with *money* rather than with *landholding*, came into direct collision with the *feudal idea*, and finally in great measure conquered it. A mercantile class had arisen with

handicrafts in the towns : and this class, buying and selling, and laying up wealth, was sapping the living and hopeful energy from the feudal ranks. Even labour, as we saw in the last chapter, had become a thing to be bought and sold : and the tenant-farmers, while their bargains with the landlords might be made in feudal language, were held by no feudal bonds. In consequence of these changes, somewhat different names began to be applied to social classes in the fifteenth century from those which had been used earlier in the Middle Age. Next to the Crown came the barons and other peers. They were the great nobles, like our nobles now, only with much greater establishments, and troops of retainers and servants. In those days it was considered a great honour and advantage for a gentleman to be a retainer in the house of a peer and to wear his livery. Many privileges were attached to such a position ; the nobleman often maintained his dependents in their numerous lawsuits, and sometimes shared the profits of the success which his great influence too generally commanded ; the retainer constantly associated with his patron, joined in his pursuits, adopted his manners, and often ended by himself becoming a peer. As it was among the nobles that feudalism originated, so it was among them that it lasted longest. Such practices as livery and maintenance manifestly tended to perpetuate the dependence, the leaning of class upon class, and the association of power with landowning, which were the central principles of the feudal system, and to resist the entrance of the modern ideas, which, making power purchasable by money, however won,

inevitably made classes more independent, and, possibly, antagonistic. Next to the peers came the **knights and squires**, very much like our country gentry of the present day, with feudal ideas, love of coats of arms and long descent ; maintaining large households ; occupying themselves as county members, justices of the peace, &c. Just beneath them came the **yeomen**, including the great body of small independent freeholders, descendants of the Norman **socmen** (Chap. II. sec. 6), and the **tenant-farmers**, who, as you know, gradually became a class in the course of the fourteenth century. The yeomen were perhaps the most robust class in England at the end of the Middle Age : they did not live luxuriously ; they were often reinforced by merchants and other townsmen, who wished to invest their money in land ; they were free of the feudal garments which time was wearing out, and thus able to cope with the rush of new thoughts, new inventions, and new habits which the coming age was to bring. Then there were the **townsmen**, the merchants and manufacturers who had slowly won independence and representation for their boroughs ; who quietly awaited the development of trade ; who were indifferent to politics, and were the unconscious instruments of a social change which to them was no revolution, but a stage in a steady progress. They had hardly known feudalism ; and as they bought land and pushed themselves into the ranks of yeomen and squires, they were laying the foundation of a new non-feudal aristocracy. Then there were the **artisans and labourers** in town and country, who had ceased to be **serfs**, and who, though



they had no voice in the government of the country, lived in tolerable comfort. Beggary was thought a great crime in the Middle Age ; but the deserving poor were looked after, first by the clergy, and then, as they are now, by parishes and other divisions of shires. You have now some idea of English society when Henry VII. came to the throne.

**7. The King in the Fifteenth Century : Treason.**

—The Constitution was not much changed during this period ; but its working was considerably affected by the growth of society, and the external history of the country. The king was still the supreme magistrate ; and perhaps more valued than he had ever been. The title of Henry IV. was purely parliamentary ; and thus the great principle was respected, that the king was subordinate to the nation—the principle that had dethroned Edward II. and Richard II. But in the fifteenth century kings were strengthening their power, and becoming more uncontrolled in the exercise of it, all over Europe. Feudal obligations were relaxing as feudalism was wearing out ; the influence of vassals and nobles was declining, and kings naturally and necessarily absorbed it. England, notwithstanding its great principle of self-government, was by no means insensible to the change. There were several symptoms to indicate this. For one thing, the practice which had prevailed from the very earliest times in the election of English kings, the practice of observing as much as possible the law of hereditary succession and primogeniture, was made of so much importance that the House of York, as you have seen, based upon it their claim to supersede the House of

Lancaster. Again, the influence of Parliament, the means by which the nation governed itself, was less under Edward IV. than it had ever been ; and yet Edward IV. was one of the most popular of English kings. **The nation was willing to acquiesce in his almost uncontrolled or absolute rule.** There was also a tendency to make more of the offences against the king, the breaches of fealty and homage, which, since the days of the old English King Alfred, had been grouped under the name of **treason**. Ideas about treason were rather vague until Edward III. in 1352 made them clear by his **Statute of Treasons**. This famous enactment divided treasonable offences into six classes : (1) Attempts on the life of king, queen, or prince of Wales ; (2) attempts on the honour of queen's eldest daughter, or princess of Wales ; (3) levying war against the king in his realm ; (4) joining the king's enemies ; (5) counterfeiting his money or great seal ; (6) slaying the lord chancellor, treasurer, or judges in the discharge of their duty. As kingship got more important, the list of treasonable offences was enlarged ; and additions were made in the course of the fifteenth century, though they are not important enough to be noticed here.

8. **The Privy Council.**—Ever since the date of Magna Carta I have occasionally spoken of the king's **Ministers**. It was natural for the king, in the early Plantagenet times, when the Great Council had become a mere gathering of feudatories, to have an inner circle of advisers, consisting of men of distinguished wisdom as well as rank. Henry II. had such a circle ; so had Richard I. and John. During the

long minority of Henry III. the ministers became more numerous and powerful. They had of necessity to exercise the government ; and when Henry III. reached majority, **they remained as a perpetual council, distinct from Parliament, consisting of bishops, barons, judges, &c.** ; they met to advise the king whenever he wanted them ; **aided him in the exercise of the executive government** ; tried royal suits too intimate for even the King's Bench to interfere with ; heard petitions ; and issued **ordinances** (Chap. VI. sec. 12 (1)). During the strong personal reign of Edward I. we hear less of the Council, though we have evidence that it existed. In fact, it was now *an acknowledged governing arrangement, an integral part of the Constitution*. It was generally in the background when the king was strong, and in the foreground when he was weak. It governed instead of the incapable Edward II. Under Edward III. we hear little of it. Under Richard II. it again came forward ; and in the course of the fifteenth century, as the **Privy Council**, it grew fast and attained much strength. It had hitherto had a good influence, and had not seriously interfered with the self-government of the nation through the Parliament. But it is evident that if it was to be a perpetual institution, and if Parliament was to have no say, either as to its election or its procedure, it might become an instrument of oppression, and make self-government an impossibility. Accordingly, three times in the reign of Henry IV. Parliament demanded and obtained the right to nominate the Privy Council, and to prescribe the oaths to be taken by its members. So

controlled by Parliament, the Privy Council worked constitutionally and well, and the nation believed in it. The long minority of Henry VI. necessarily increased its power, and it became a council of regency. Unfortunately, at the same time the Parliament ceased to nominate it ; so that just when it had gained most power in the nation, it was no longer responsible to the nation. During the reigns of the Yorkist kings, and at the accession of Henry VII., it was responsible only to the sovereign ; and its powers were not very clearly defined.

9. **Parliament in the Fifteenth Century.**—(1) **The House of Lords** changed little during this period, so far at least as its methods of working were concerned. Several new ranks of peers were established between 1337 and 1440. The title of **Duke** was introduced by Edward III., who made the Black Prince Duke of Cornwall ; and it stood henceforth for the highest order of nobility. Richard II. gave to a favourite the title of **Marquis**, borrowed and adapted from Germany. The first **Viscount** was created in 1440—the title having been long used in France. **Earls** had, as you know, existed since the English, and **Barons** since the Norman, conquest of Britain.

(2) **The House of Commons.**—The history of the great representative chamber is more important and interesting. It began the century as distinctly the leading power in the State, and for a long time it continued to make good its position. Its county members were elected by all the persons who had a right to appear at the county-court ; *i.e.* by all landowners however small, and a very considerable number of

tenant-farmers—in fact, by all freemen. Borough members were chosen by constituencies which differed in different places. The Commons legislated, as you know, by presenting petitions, which the king turned into permanent statutes. During the reigns of Henry IV. and Henry V. it became the regular practice for petitions to be made statutes before the House of Commons voted taxes; and it was agreed that the king should not in any way alter petitions (now called Bills) in turning them into statutes. The power of the House of Commons was thus very great, for the necessary supplies could not be obtained by the king unless and until he consented to the legislation determined on by the representatives of the nation; and a further step was taken when it was decided that the representatives of the nation should be applied to for money in the first instance—in other words, that all money-bills should originate in the House of Commons. So matters went on till 1430, in the minority of Henry VI. In that year the county franchise was restricted to 40s. freeholders; *i.e.* nobody was entitled to vote for a county member unless he was owner of a freehold worth 40s. a year, which in those days was equal to about 30*l.* at the present day. So that after 1430 Parliaments were not so thoroughly representative of the nation as they were before it, and self-government was not so well carried out. The House of Commons now consisted of, as well as represented, only landowners; for in a short time after the statute of 1430, it was ordered that all county members should be above the rank of yeomen, and

that their estates should lie within the counties for which they stood. Of constituencies in boroughs little is distinctly known. Borough members make little figure in mediæval Parliaments. The peerage had ceased to be patriotic since the time of Richard II., and the Wars of the Roses nearly destroyed it. So it was natural for the kings to rule somewhat absolutely in the end of the fifteenth century, when they had an irresponsible Council to back them, and when Parliament was weak, and not fully representative of the nation.

10. **The Church.**—Of the Church there is little to be said. Lollardy had been destroyed, more by the burning of its professors than by the refutation of their opinions. But though the Church of England held firmly to Roman Catholic doctrines, it hated as much as ever the perpetual interference of the Pope, his taxes, his evasions of the laws of provisors and premunire, &c. The clergy were suffering from the weakness of the peerage, upon whom they had too closely leant.

11. **Summary.**—The House of Lancaster acceded with the full consent of Parliament, and reigned with its co-operation. They had the aid of powerful Privy Councils, which for a time were nominated by Parliament, and commanded full royal and national confidence. The House of Commons, representing the nation, led the nation. But circumstances were bringing this harmonious state of matters to an end. The peerage was divided into hostile factions, and had lost its common spirit of patriotism. The House of Commons was made a narrower and less fully representa-

tive body by the disfranchising statute of 1430. The last Lancastrian king, Henry VI., was long a minor and always feeble ; the Privy Council, which the narrowed Parliament ceased to nominate or control, ruled, and it did not rule well. Then came the Wars of the Roses. They were really caused by the jealousies of the peers ; but the Duke of York found it convenient to make a claim of prior descent from Edward III., and he won the confidence of the majority of the people, who thought they would now be ruled with vigour. They were ruled with vigour indeed, but also with harshness ; and they were gradually forgetting to rule themselves. Parliament was becoming less and less important ; the king and the Privy Council were everything. The nation, which from the earliest times and through all vicissitudes had governed itself, first under regal, then under baronial, and then under parliamentary guidance, seemed to be forgetting its past, and to be willing to lie at the feet of any king strong enough to be victorious in the field, and fortunate enough to claim kindred, however remotely, with the Plantagenets. Changes were in progress in English society and in English thought, to which neither the Constitution nor the Church had adjusted itself, and which were but the prelude to still greater changes, which were to revolutionise Europe, and bring in a new order of things.

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## CHAPTER VIII.

THE TUDOR DICTATORSHIP. 1485-1603.

1. **Reign of Henry VII.** (1485-1509).—The crown was secured to Henry VII. and his heirs for ever ; but as his blood was Lancastrian, his reign was disturbed by insurrections prompted by the adherents of the House of York. He had no very marked individuality, and his reign has no variety of interest for the student of constitutional history. Such energy as the king possessed was the only political force of the time. The peerage consisted of about thirty or forty members ; the Commons remained in the lethargy into which they had been sinking for nearly a century. The mercantile classes were full of activity, and their progress was immensely stimulated by the discovery of America and the invention of the mariner's compass. But as yet they took no interest in politics.

2. **Benevolences.** — Henry VII. was continually wanting money, and often more than Parliament was willing to give him. In order to avoid a conflict with the Houses, he adopted a bad expedient, which had been introduced by Edward IV. and repudiated by Richard III. He sent commissioners to beg large sums from merchants and other rich people. At first the demands were responded to without much opposition. The donations were supposed to be voluntary, and were called **benevolences**. But it was of course really impossible for any individual to refuse a royal request ; and thus a 'benevolence' was simply a new



tax, as illegal as it was intolerable. Many of the disused feudal imposts, too, were revived ; and one or two popular risings took place.

3. **The Star Chamber.**—The Privy Council, which since Parliament lost hold of it had grown strong as Parliament grew weak, was naturally made much of by Henry VII. **He revived its judicial powers, which had fallen into abeyance.** As a court of justice it sat in a room at Westminster adorned with a pattern of stars, and hence it came to be spoken of as **the Court of Star Chamber.** Thus the latter was not a separate institution, but very much what we should now call a 'judicial committee of the Privy Council.' It dealt at first with civil cases, which had hitherto been tried exclusively in Chancery ; but after a time it began to take up criminal cases, and, **as it did not employ trial by jury,** its action was often very unjust and oppressive, and it was a great hindrance in the way of self-government.

4. **Henry VIII. and Parliament.**—Henry VIII. succeeded in 1509. He was young, accomplished, and popular, and made a great show of governing the people according to their own will. But he got on well with Parliament simply because Parliament was always ready to give and do what he wanted. **In reality, he governed according to his own will.** He created a number of new peers to fill the blanks made by the Wars of the Roses : and they, of course, were not likely to resist their benefactor. The imperfectly representative House of Commons often represented only the king, for he and his agents influenced the elections so that royal nominees were always re-

turned. Between 1523 and 1529 no Parliament met at all.

5. **Henry VIII. and Taxation.**—From the earliest times demands of money had always roused the English people to secure their self-government. Henry's first Parliament forestalled his necessities by granting him the variety of customs duty called 'tonnage and poundage,' *for life*. Then the king involved himself in a war to help the Emperor Charles V. against Francis I., king of France, as well as in military operations in Scotland ; and in 1523 he sent his Lord Chancellor, Cardinal Wolsey, to the House of Commons to demand 800,000*l.* in the form of a tax on lands and goods. The demand was unprecedented and the sum was enormous ; and though Wolsey was eloquent in asserting the necessity and glory of the wars, the Commons resisted. They offered to grant a smaller amount, but were at last frightened into giving what was originally asked. Twice during his reign—once in 1522, and again in 1544—Henry forced his subjects to give him loans, promising repayment. He also exacted benevolences on several occasions. In 1525 he asked a loan, but was met by an armed resistance, and had to yield. So far, however, was Parliament from renewing the struggle that had won **Magna Carta** and the **Confirmatio Cartarum**, that in 1529 and 1544 it passed statutes relieving the king from the obligation to repay what he had borrowed, or might borrow in future. So that by the end of his reign Henry VIII. was very nearly taxing the people according to his own will, and the people seemed very nearly giving up all desire to tax themselves.

6. **Henry VIII. and Legislation.**—If the nation was comparatively indifferent about *self-taxation*, it is not surprising that it should have been still more so about *self-legislation*. Henry induced Parliament to ordain that henceforward **proclamations made by King and Council should have the force of statutes, provided they were not illegal; and that any king of the age of 24 might by his own will repeal any statute made since his accession.** You will see at once that by acting in this way Parliament was not only yielding what it had won in the past, but giving into the hands of the king power which he had hitherto never possessed.

7. **Henry VIII. and Judicature.**—The activity of the Court of 'Star Chamber' greatly outweighed that of other courts of justice under Henry VIII., and, as trial by jury was unknown to it, we may say that the practice of *self-judging* disappeared from England during his time. As the Star Chamber was fit for its work, abundance of work was given it to do. Henry VIII. made actions which had hitherto been regarded as innocent into crimes punishable with the severest penalties. Treason was stretched from the wise and just limits within which Edward III.'s statute had confined it, until it covered the region of men's thoughts. In this department, as in all others, governing arrangements were allowed to continue only so long as they helped the king to govern according to his own will.

8. **Henry VIII. and the Church.**—A great change took place in the Church of England during Henry VIII.'s reign, and the king was the agent who

carried the change into effect. The Church of England had been, as you know, a branch of the great Roman Catholic Church ever since the time of Augustine and Theodore of Tarsus (Chap. I. sec. 19). As such it had always acknowledged without question the spiritual headship of the Pope, though it had struggled hard, and not always successfully, to prevent him from taking all control of ecclesiastical matters out of the hands of the civil power. The want of success was never more manifest than at the beginning of the sixteenth century. The Pope was always trying to evade the statutes which forbade his interference. A practice had grown up of exempting clergymen who had committed civil offences from suffering civil punishments. The nation was more discontented with the Pope and the clergy who obeyed him than it had ever been. Meanwhile, in 1517, Martin Luther had boldly denied the authority of the Pope and many of the doctrines which all Christians in the Middle Age believed, and by doing so had stirred up a great portion of Germany to do the same. Everywhere in Northern Europe a movement was in progress, in some respects like that of Wycliffe and the Lollards, but deeper and more lasting. In England the great mass of the people were slow to quarrel with the doctrines of the Roman Catholic Church, but their loyalty to the Pope was now thoroughly shaken. Just at this juncture Henry VIII. had a personal quarrel with the Pope. He was tired of his first queen, Katharine of Arragon, and he asked the Pope, who was the final authority on matrimonial questions, to allow him to divorce her on the ground that she had been the widow of Henry's

brother, and that the marriage had been illegal. The Pope refused. The matter was much debated, and many negotiations took place; but Henry was resolved on the divorce, and the Pope was resolved against it. Meanwhile, the king, tired of delay, forsook Katharine, and took a new queen, Anne Boleyn. The Pope ordered him to recall Katharine, on pain of excommunication. The king refused, and in 1534 ended the long dispute by rejecting the Pope's authority, and getting both Parliament and Convocation to proclaim him head of the Church of England. From this time forth, of course, the Church of England ceased to be a branch of the Roman Catholic Church. The king and the nation were in this matter working together; what the king did was for the good of the nation. The Parliament which proclaimed the royal supremacy over the Church met in 1529, and was not dissolved till 1536. It was mainly occupied in passing statutes to carry out the ecclesiastical changes which had been begun. The privileges of the clergy were cut down on all hands. In 1536 the smaller and in 1540 the larger monasteries were dissolved, and their property was confiscated to the crown. But by this changed 'Protestant' Church of England most of the doctrines of the Roman Catholic Church, from which it had separated, were still held.

9. **The Reign of Edward VI. (1547-1553)** began well. The king was a boy, and government was in the hands of the Protector Somerset and the Duke of Northumberland. These men tried to restore some of the self-governing practices which had been lost.

Under their direction Parliament abolished all the new treasons created by Henry VIII., and cancelled the statute which gave to royal proclamations the force of Acts of Parliament. But when Somerset ceased to administer in 1552, the abolished treasons were created over again, **although the oaths of two lawful witnesses were made necessary to establish the guilt of any one accused of treasonable practices.** And the royal proclamations went on, notwithstanding the parliamentary repudiation of them; so that there was as yet no real revival of self-government, though there were signs of such a revival. **Meanwhile, the Church of England, which had rejected the Pope's supremacy, was quickly giving up the Roman Catholic doctrines, and substituting for them the doctrines she now holds as a Protestant Church.** At the same time, proprietors, impelled by the new commercial spirit of wishing to get as much money as possible out of their land, were encouraging pasture rather than arable farming, and thus throwing a large number of agricultural labourers out of employment. These social and religious changes produced risings of certain districts in 1549, but they were promptly and harshly suppressed.

10. **Mary**, daughter of Henry VIII.'s first queen, Katharine of Arragon, succeeded her brother in 1553, and reigned till 1558. During these five years the methods of government were as dictatorial as ever, and the queen, as a Romanist, **re-established the doctrines and practices of the Roman Catholic Church, and persecuted all who would not renounce Protestantism.** The House of Commons was more mutinous against

the royal dictatorship than it had been under Henry VIII., and the crown accordingly tried to influence elections, and destroy self-government in that way.

11. **Elizabeth and the Church.**—When Elizabeth, daughter of Henry VIII. and Anne Boleyn, succeeded in 1558, she, as a Protestant, at once proceeded to undo the ecclesiastical work of her sister. She brought back the Protestant prayer-book of Edward VI. ; by the **Act of Supremacy** (1559) she reaffirmed the doctrine of the royal headship of the Church of England, forbidding all foreign jurisdiction in spiritual as well as secular affairs, and made the observance of it binding by oath on all clergymen and persons holding office under the crown. By the **Act of Uniformity** (1559) all clergymen were obliged to use the Protestant liturgy prepared by Edward VI., under graduated penalties of imprisonment, and all persons were required to attend the services at their parish churches, unless they had 'a lawful or reasonable excuse,' under penalties of censure and fine. In 1563 the Articles of the Church of England, thirty-nine in number, were drawn up, and in 1571 they were made binding on the clergy by **Act of Parliament**.

12. **The Puritans.**—Protestantism had now taken deep root in England. The people had been slow to leave hold of the Roman Catholic doctrines, but the immense majority of them had done so now, and Protestantism was really 'established.' But from the time of Edward VI. there had been two parties among the Protestants—a party which, like the Lutheran abroad,

wished to maintain the liturgy and a measure of Catholic form in the Church of England, which you may think of as the **Anglican** party ; and a party which, like the followers of Calvin abroad, wished to disuse the liturgy, and throw away every scrap of Catholic form and doctrine, and which you must call the **Puritan** party. The exile of Protestants under Mary, and their consequent intercourse with foreign Reformers, widened the gulf which had opened in the camp of the English Reformation. Now, Elizabeth, though a decided Protestant, was an Anglican, and not a Puritan ; and the Protestant Church of England was built upon a foundation of Anglicanism, though a great many of its best men were Puritans, and the majority of the bishops were at least more Puritan than Elizabeth. The queen thought Puritanism a thing to be contended with and suppressed almost as much as Catholicism ; and, in those days of royal dictatorship, what the queen thought was acted upon. The Act of Uniformity worked equally well against both Elizabeth's enemies ; for the dislike of the Puritans to the Service-Book grew from year to year, until they refused to worship according to its directions, and preferred to suffer the penalties of breaking the Act. In Scotland—where, as you shall hear presently, the Reformation had begun among the people and been very complete—the great medieval system of *ranks* of clergy (bishops, priests, deacons) was being rejected, and the principle of the official equality of all clergymen, which we call the **Presbyterian** principle, was being substituted for it. Many of the Puritans in England added belief in the Presbyterian principle of church government to their



dislike of the liturgy ; and thus it was absolutely necessary for them to leave the Church of England, which held firmly to the hierarchy set up under Theodore of Tarsus, without the headship of the Pope. Those Puritans who left the Church of England were called **Nonconformists**, and Elizabeth always punished them as *law-breakers*, though some of her ministers tried to persuade her that they ought to be tolerated, and the **Commons were distinctly Puritan in their sentiments**. The queen thought that the Church of England was as far away from the Roman Catholic Church as a Protestant Church ought to be ; and the Commons were too thankful to have a Protestant sovereign, to complain much or audibly that they had not a Puritan one.

13. **The High Commission Court.**—But the conflict between Anglicanism, supported by all the force of the Tudor dictatorship, and Puritanism, supported in the main by the House of Commons, grew sharper and sharper. Elizabeth, working in harmony with Archbishop Whitgift, a great Anglican and anti-Puritan, in 1583 established a body of commissioners, forty-four in number, of whom twelve were bishops and three formed a *quorum*, to inquire by the oaths of jurors and otherwise into the religious opinions and practices of individuals ; to administer the oaths of supremacy and uniformity and punish all refusals to take them ; and to force, under penalties, the **adhesion of the clergy to a series of propositions founded upon the canon law, and hitherto unknown to the constitution of England**. This body was called the High Commission Court. With two such engines as

the Star Chamber and the High Commission Court at her command and under her control, Elizabeth, inheriting the dictatorial ideas of her family, and sincerely believing that both Catholicism and Puritanism were intolerable, was willing and able to repress both relentlessly so long as the Puritan House of Commons was willing and able to submit itself to the royal will. In 1590 Puritanism advanced a step. Some of the Nonconformists resolved to set up churches on the Presbyterian model, and deny the royal supremacy. The preachers of this doctrine were tried by the Star Chamber, condemned to banishment, and then released on bail. Then the queen and Anglicanism advanced a step. In 1593 an Act was passed condemning all Nonconformists above sixteen to imprisonment, and, in case of resistance, to banishment ; with execution for felony in the event of unlicensed return. Those of the Nonconformists who were not Presbyterians began about this time to be called **Independents**, because they held not only that the clergy was officially equal, but that each congregation of Christians ought to manage its affairs in its own way.

**14. Mary Stuart and the Succession.**—The question who was to be the successor of Elizabeth mixed itself up with a great many of the religious and political controversies of the time, and determined their issue. There were several proposals for the queen's marriage ; but, one after another, they came to nothing, and Elizabeth was advancing in life without having given the throne an heir-apparent. There were two heirs-presumptive : Mary Stuart, Queen of Scots, the eldest niece of Henry VIII. ; and Lady Catharine

Grey, daughter of a younger niece of Henry VIII. Seniority was thus in favour of Mary Stuart ; but, as you know, the real title of an English sovereign was always parliamentary, and an Act of Parliament had been procured by Henry VIII. settling the succession on the family of his younger niece ; so that Lady Catharine Grey was the true parliamentary heir-presumptive. But she was a Protestant, and the Roman Catholics made a great deal of Mary Stuart's seniority because she was a Catholic, and they thought that, with her as queen, Catholicism would be re-established in England. Elizabeth was of course unfavourable to the succession of Mary Stuart, and she had a personal quarrel with Lady Catharine Grey, who had made a marriage displeasing to her ; so it was impossible to enlist her sympathies decidedly on either side. In 1571 it was enacted that Parliament could at all times regulate the succession by statute. In this way Elizabeth saved herself from the obligation of carrying out her father's wishes in regard to the succession of the line of Lady Catharine Grey. Meanwhile events in Scotland drove Mary Stuart to seek the protection of her cousin in England. Elizabeth imprisoned her, and she became henceforward the centre of successive Catholic conspiracies. At last, in 1587, she was executed as a conspirator. After this the question of the succession slumbered ; the Catholics had no object to rally round ; the Protestants, Anglicans and Puritans alike, were thankful that there was now no prospect of a Catholic sovereign of England.

15. **Elizabeth and the Constitution.**—It is necessary to say a great deal about the Church in describ-

ing the history of the sixteenth century, because the time was one of vast religious and ecclesiastical changes, and all political movements had more or less connexion with these changes. But you must never forget that the subject of this book is the growth of the institutions and arrangements by which the people of Great Britain governed, and still govern, themselves, and that all other subjects are noticed only in so far as they bear upon that. How, then, did the Constitution, or group of arrangements, fare under Elizabeth? The power of the Crown was still greater than was consistent with self-government; but, as the sovereign was a woman, it was exercised principally through her **ministers**—that is, the chief members of her **Privy Council**. These men were very able, and they thought a great deal about the advantage and good of the nation, and not always and only about pleasing and aggrandising the queen. **Judicature** continued in the bad state into which it had fallen under Henry VIII.; the Star Chamber did nearly all the work, and trial by jury had become useless, though it never entirely ceased to be employed. Occasionally the action of common law was suspended, and martial law substituted for it. Martial law has always been admitted in case of rebellion, but Elizabeth sometimes put it in force when there was no such pretext. As regards **legislation**, the practice of issuing **royal proclamations with the force of statutes** persisted, though it was against the law. Elizabeth imposed no new **taxation**, though she occasionally forced loans of money. **The House of Lords** was not a great force in the State; for the nobility

the Constitution;

was for the most part a new one, and religious questions divided it. But the **House of Commons** was ceasing to be the spiritless, servile thing it had been for a century ; and though it was, on the whole, satisfied with Elizabeth as Protestant, and with her ministers as Protestant and patriotic, it was beginning to realise over again the forgotten idea of self-government, and on several occasions it resisted the action of the Crown.

16. **Scotland.**—We saw how the Scots struggled to throw off the English over-lordship established by Edward I., and how successful they were under Robert Bruce and the successors of his line. But I told you also that feudalism was much stronger and harsher in Scotland than in England, and that the Scottish Parliament was hardly at all representative of the nation. The character of the king was thus of immense importance ; for if a weak king was on the throne, the nobles, with their great feudal powers, would naturally try to pull each other down, and the nation, with no way of governing itself, would suffer while the great men fought. And this was just what happened in the end of the fourteenth century. The direct line of Bruce became extinct in 1371, and kings of the House of Stuart occupied the throne. They were quite unable to govern, and the nobles contended, and kept the country miserable. At last a good king, James I., reigned from 1406 to 1437. He was strong enough to restore law and order, and wise enough to recognise the excellence of English self-government. **Under his influence the Scottish Parliament became representative of the smaller**

as well as the larger landholders in counties. But neither king nor people was strong enough yet to conquer the feudal lords. James I. was murdered, and the nobles went on fighting. Their influence was so preponderant in Parliament that a custom introduced in 1367 of preparing business by a committee of the Three Estates, called the Lords of the Articles, and virtually settling it before presentation to the Legislature, was not discontinued. Meanwhile the enmity towards England continued, occasionally leading to Border feuds, though never to a great war. But at last a happy event occurred which brought the hope of better times. James IV. of Scotland married Margaret, sister of Henry VIII., and the Houses of Tudor and Stuart were thus united. But the union did not mean immediate peace. James IV. was killed at Flodden ; James V. died defeated and in despair ; and Mary's double connexion with the crowns of England and Scotland wrought much sorrow to both countries, and brought her head to the block. But the Reformation came, and ushered in the modern history of Scotland. In England it was at first a political movement, and began with the king ; in Scotland it was at first a religious movement, and began with the people. Protestantism at once took the hue of Puritanism, and the Reformed Church was Presbyterian in its organisation. The Crown, along with the Parliament, took up an attitude of opposition to the Church and the people. But the people were aroused from the slumber of centuries, and would not be repressed. After a time the nobles joined them. Presbyterianism,

after a struggle, was established in 1592. James VI., son of Mary Stuart, was a Protestant, but an Anglican, and he hated Puritanism. So that the king and the nation did not work well together, and the nation had no sufficient way of expressing itself in Parliament. **Judicature** was at first very feudal and imperfect. In 1532 the **Court of Session**, gathering into its own hands the jurisdictions exercised in England by Parliament and Privy Council, appears distinctly. It consisted of fifteen judges, and tried civil cases only. Juries were not used.

17. **Ireland.**—When Henry VII. came to the throne the position of the English in Ireland was worse than it had been at the death of Edward I. Direct English authority was confined to the ‘Pale,’ *i.e.* the districts of Dublin, Drogheda, Wexford, Waterford, and Cork. The nobles who seized the rest of the country under Henry II. had become Celts. Henry VII. tried to combine extension and strengthening of his authority with fairness to the Irish. He made an Irishman lord lieutenant, and he introduced **Poyning’s law**, the main provisions of which were—(1) that all statutes hitherto made in England should henceforward apply to the Pale; (2) that no Irish Parliament should be held without the permission of the English king and Privy Council. This mixed policy did not work well; the Pale was so very small, and its borders tended to contract rather than to widen. Henry VIII. tried the plan of strengthening English rule, and he succeeded in extending it over the whole country, calling himself ‘king,’ and no longer ‘lord,’ as preceding kings of

England had done. He obliged the Irish to accept the doctrine of the royal ecclesiastical supremacy, which they were not unwilling to do. **But the people never gave up the Roman Catholic doctrines ;** and thus Henry VIII. could only maintain his supremacy by the force of fear. To make matters worse, **Elizabeth established Anglicanism in 1560, and thus the church of the minority was made to seem the national church.** A great rebellion broke out, which was raging when Elizabeth died. Thus at the beginning of the seventeenth century there was this difference from the state of matters at the beginning of the fourteenth, that the English governed the *whole* of Ireland by means of the Constitution which had worked so well in England, but the difference of blood and religion continued so marked that the Irish only abstained from rebellion so long as they were made to fear the sword.

18. **Summary.**—Thus, in the sixteenth century the Reformation came, and brought great changes in the British Empire. Henry VIII. espoused its cause from political motives, and so helped the nation, though he governed according to his own will. As the century went on the Protestants were divided into two parties, the Anglicans and the Puritans, which were intolerant of each other. Roughly speaking, the Crown and the Peerage went with the Anglicans, the Commons with the Puritans. Then the Third Estate woke from its lethargy, and began again to take the lead. But the Tudor dictatorship had virtually suspended the Constitution, and the machinery had again to be put in gear before it was fit for work.



The influence of the Crown and of the Crown's able ministers had been so consistently used on the side of Protestantism that the want of self-government was not very seriously felt.

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## CHAPTER IX.

### THE STUART DESPOTISM. 1603-1685.

1. **James I.** (1603-1625).—When Elizabeth died the Privy Council at once proclaimed James VI. of Scotland, son of Mary Stuart, as king of England. He had as yet no valid title to the throne, for representatives of the House of Suffolk were alive, and it was to the House of Suffolk that Henry VIII. had destined the crown to go. But the people were willing to accept him ; and Parliament, assembled without delay, gave him the acknowledgment without which he would have been a usurper. His accession was advantageous in one important respect—he wore his old crown of Scotland as well as his new one of England ; and thus there was for the first time **one king of Great Britain and Ireland.**

2. **The Divine Right of Kings.**—The people and the Parliament supported James ; and he had, therefore, as complete a title as an English king ever had, or can have. But very soon after his accession he began to assert in various ways that he had a title given to him by God, and that neither the assent nor the dissent of Parliament or people was of real value. He considered that a king was not a king unless he

was irresponsible ; and that the function of Parliament was to ratify the royal decisions, but, under no circumstances, to oppose them. You will see at once that this was a perfectly new *theory* in the constitutional history of England. But, though it had never before been put forth as a proposition, it had been acted upon for more than a century. The York and Tudor kings governed according to their own will, though they never denied, or cared to deny, that the *right* to govern belonged to the nation in Parliament. James I. was very fond of studying and talking about theology ; and he persuaded himself that the practice of the Tudors was right and the idea of national self-government wrong, **because kings were God's chosen ministers, and Parliaments were only a machinery by which they worked their will.** This theory pleased the Anglican party in the Church of England, and they preached it from their pulpits. This chapter will tell the story of how James I. and the successors of his family acted upon their theory, and what was the result of it.

**3. James I. and Parliament.**—The first Parliament which James met was a very different sort of assembly from those which submitted to the dictatorship of Henry VIII. The great majority of its members were Puritans, not Anglicans ; and to all Puritans, whether members of the Church of England or Non-conformists, the doctrine of the divine right of kings was an impious absurdity. It contained a number of lawyers—men who made it their life-work to study the laws of their own and other countries ; and they were as convinced of the rightness of self-

government as the king was of its wrongness. A contest between king and Parliament was thus inevitable, and it began at once. The Commons published a document called a '**Form of Apology and Satisfaction**,' which temperately, but very decidedly, asserted three positions quite inconsistent with the theory of the divine right of kings : (1) Parliament has a legal right to assemble independently of the royal will ; (2) It is a court of record ; (3) It is the highest court in the land. These propositions, **implying that the nation was the State, or ultimate source of power**, were the basis of the parliamentary position during the reign of James I.; and they had to contend with the doctrine that **the king was the ultimate source of power**—a doctrine unintermittingly proclaimed by James, and supported by an influential section of the clergy. James summoned four Parliaments. **The first** (1604–1611), besides presenting the 'Form of Apology,' and discussing matters connected with taxation, complained of the High Commission Court, and the royal proclamations with the force of statutes. (Chap. VIII. sects. 6 and 13.) James evaded the first complaint, and promised to restrain royal proclamations after getting an opinion of the judges against them. For three years no Parliament met. **The second Parliament** (April–June 1614) was so sharply antagonistic to the king that it was dissolved in two months, and four of its members were committed to the Tower. Again there was an interval without a Parliament, this time of six years, and James governed irresponsibly, as he imagined he had a divine right to do. **The third Parliament** (1620–1622) met, with a

firmer resolve than ever to restore the self-government which had been lost. It was principally occupied in **impeaching, or trying at the bar of the House of Lords**, some of the King's ministers with whose conduct it was dissatisfied, and especially the Lord Chancellor Bacon ; but it also opposed the foreign policy of the king, the object of which was to secure an alliance with Spain and the Catholic Powers of Europe, ratified by a marriage between Charles, Prince of Wales, and the Spanish Infanta. The king asserted that foreign policy was a mysterious matter, which he had a divine right and ability to deal with ; and that the discussion of it was quite beyond the powers and outside the sphere of Parliament. The Commons then rejoined by **a protestation that the privileges and jurisdictions of Parliament belonged to it of legal right ; that Parliament had a right to discuss every subject of national import with freedom of debate and privilege of members ; and that the king ought to seek explanations of the conduct of members from the members themselves in full Parliament, and not from any third party.** This protestation, though it was only an assertion of the aboriginal English principle of self-government, was so offensive to the king that he tore it from the journals of the House of Commons and dissolved Parliament, again imprisoning some of the members. **The fourth Parliament (1624) had no conflict with James, chiefly because he had abandoned the project of the Spanish marriage, and was willing to be advised on matters of foreign policy.**

**4. James I and Taxation.**—The battle between

the divine right of kings and the legal rights of the nation in Parliament was strenuously fought on the field of taxation. You remember that by the end of the fourteenth century Parliament had made good the right to be asked for all taxes as well as to direct how money was to be spent. These rights had been very much forgotten by the submissive Parliaments during the Tudor dictatorship, and James I. ignored them systematically. He was very extravagant, and his need of money led him to extort the old feudal burdens and to employ various illegal methods of getting money. **Customs duties** were at this period a principal form of taxation ; and James got into the way of manipulating them without consent of Parliament, as Edward III. had done. When Parliament complained, and quoted its statutory rights, the king affirmed that Customs were the result of foreign commerce ; and that, as he had a divine right to manage all foreign affairs irresponsibly, Parliament had no title to interfere with his manipulation of the Customs. In 1606 an import duty was fixed on currants, and a merchant, John Bates, refused to pay it unless it was sanctioned by Parliament. The Crown forthwith took the case to law, and a decision was given against Bates. In 1608 a 'Book of Rates,' or, as we should now call it, a *Customs Tariff*—i.e. a list of duties on merchandise—was published on the sole responsibility of the king, and all disobedience to it was by anticipation pronounced an offence against his majesty. In 1610 the Commons made a solemn protest against unparliamentary taxation ; but the House of Lords would not co-operate with them, and the pro-

test never reached the king's hands. During the long intervals between the first and second and the second and third Parliaments, James raised money by the notoriously illegal methods of *loans* and *benevolences*. The nation, though it saw its danger, could not avert it; and though it asserted the right of self-government, could not make it good against the despotism of the Crown, grown easy with the practice of a century and a half, and supported by many of the Privy Council and the Crown lawyers.

5. **Judicature** was as much at the mercy of despotism as **taxation**. No judge was secure of his office unless he always decided in favour of the king. The royal interference, after hampering the action of the Bench for some time, **culminated and outdid itself in the dismissal of Chief-Justice Coke in 1614** because he refused to suspend the action of the **Common Law Courts during the pleasure of the king**. By this proceeding James carried his theory to the utmost limits, and he also showed unmistakably what it was and how it worked. **Henceforth the nation could have no doubt that the king considered himself above and outside of the law of the land.**

6. **The Church.**—James's sympathies were intensely anti-Puritan; and he came to the English throne with a hatred of the Presbyterianism which he had left in Scotland. Now Puritanism was the ruling sentiment in the House of Commons, and even in the Established Church; for Puritanism, as you know, did not *necessarily* lead to Nonconformity. By his ecclesiastical policy James put himself in opposition to the most powerful religious force in England, just as by his

civil policy he put himself in opposition to the central principle of her existence as a State. And as to support his civil absolutism he advanced a religious theory of divine right, so, to stifle Puritanism, he encouraged the Anglican bishops to assert that they derived their office in unbroken succession from the Apostles, and had thus a divine right to claim a monopoly of spiritual privileges and function, and, if need were, to force conformity to the Established Church. When James was on his way to be enthroned in London, a number of Puritan clergy presented to him the **Millenary Petition**, praying for ecclesiastical reforms, mainly in the direction of further Protestantising the liturgy, and not at all in the direction of substituting Presbyterianism for Episcopacy. The king received the petition, and summoned a conference to meet at Hampton Court and discuss the questions involved. At the conference Anglicanism seemed to win an argumentative victory, which was immediately put in force by the imprisonment of ten of the petitioning clergy and the refusal of the substance of the petition. The observance of the Act of Uniformity was then insisted on. Thus, by the end of his reign, James I. had, for the first time in the history of England, brought the asserted rights of the king and the beneficed clergy into apparently irreconcilable antagonism with the aboriginal self-government and dominant religious sentiment of the nation. He could almost have said, as Louis XIV. was by-and-by to say in France : '*I am the State.*'

7. Charles I. (1625-1649) was in many respects unlike his father, and in some respects superior to

him. He was less frivolous and opinionative, and he was probably more sincerely religious. But he had the same political ideas ; the same theory of divine right in kings and bishops ; the same rooted antipathy to self-government. And the nation over whom he extended his sceptre was every year becoming more devoted to self-government and Puritanism ; more distrustful, and even abhorrent, of the ascription of divine right to any institution but the Bible. In such circumstances the relations of Charles I. with his Parliaments could not but be seriously inharmonious. **The first Parliament** (June–August 1625) granted the king a smaller revenue than he wanted, reminding him at the same time that **remedial legislation ought always to precede supply** ; and was accordingly dissolved by him in anger. **The second** (February–June 1626) agreed to grant supplies in the forms of Customs duties and **subsidies or property tax** ; but reiterated the claim of reform before taxation. The House of Commons then proceeded to impeach the **Duke of Buckingham**, a member of the Privy Council, who had commanding influence with Charles, as he had had with his father, and whose character and influence were scandalously bad. The only way in which Parliament could at all control the Privy Council was by impeachment of individual members ; for, as you remember, it had ceased to nominate it in the reign of Henry VI. The impeachment was naturally highly displeasing to Charles ; so again there was a speedy and angry dissolution before the promised taxes had been paid. The king had thus no money ; and he wished to go to war with both Spain



and France. He had recourse to illegal methods—to arbitrary imposition of Customs duties, benevolences, and a forced loan from every subject, under penalty of imprisonment for the gentry, and impressment into the navy for the common people. **Five gentlemen incurred the penalty; and, according to the right of Englishmen since Magna Carta (Chap. IV. sec. 8) demanded of the Court of King's Bench why they were deprived of liberty. An officer answered that they were imprisoned by special command of the king.**

**8. The Petition of Right.**—With the two fundamental rights which even the Great Charter had secured—freedom from arbitrary taxation and arbitrary imprisonment—thus outraged, the nation felt that a great effort must be made. **The third Parliament (1628–1629) was opened by the king in an unconciliatory speech; and it proceeded at once to reassert the main rights of the nation in a document to which the king's assent was demanded. After discussion between the two Houses the Petition**

**Right was fixed in its final form; and in June 1628 it received, first a grudging, and then an unconditional, royal assent. It embodied four provisions: 1. No tax of any sort might be exacted without consent of Parliament; 2. No man might be imprisoned without jury trial, or conviction by the laws of the land; 3. No soldiers or sailors might be billeted on private persons against their will; 4. No man, while the kingdom was at peace, might be tried by martial law—i.e. without the ordinary legal processes of trial and conviction. Thus the Petition**

of Right was a new bargain between king and people, like Magna Carta, and only second to it in importance. It was now law of the land, binding king as well as people. Parliament felt the lost self-government so substantially regained by means of it, that it at once freely gave the taxes hitherto withheld. Buckingham was meanwhile assassinated ; and thus Parliament might hope for calmer days. But a new difficulty soon arose. No mention was made in the Petition of Right of Customs duties as distinguished from other taxes ; and the king continued to demand tonnage and poundage from the merchants without reference to Parliament. Parliament objected, and the king quoted the decision of the judges in Bates's case (sec. 4). But Parliament felt that the nation was not really self-taxing so long as Customs were left to the irresponsible control of the king ; and, not being able to trust Charles thoroughly, it passed resolutions to the effect that advising the levying of tonnage and poundage without consent of Parliament was henceforth a capital offence ; and that any merchant consenting to an unparliamentary Custom was an enemy to his country. The king dissolved Parliament immediately.

9. 1629-1640 —For eleven years no Parliament was summoned. Such legislation as was provided was furnished by royal proclamation. The Star Chamber was the most active court of judicature ; cruel punishments and arbitrary imprisonments were frequent. Thus, notwithstanding the Petition of Right, the nation had not recovered self-government.

10. Taxation—Ship-money.—During these years

Charles provided himself with money in defiance of the law, and by reviving *scutage*, and other long obsolete imposts. In 1634 the king, who was anxious to go to war with the rising State of **Holland**, at the instigation of his attorney-general, Noy, ordered every seaport town to furnish a certain number of ships for the navy. None of the towns, except London, could afford to fit out vessels of the required size ; and thus they had to pay a money equivalent. This was just what the king wanted, for he was in fact assessing a new tax in defiance of the Petition of Right. There was some resistance, but it was ineffectual. In 1635 and 1636 ship-money was again demanded, on both occasions from inland counties as well as maritime towns. It was now very evident that the necessities of the navy were a mere pretext to perpetuate an illegal tax ; and in 1637 a champion of the growing national resistance came forward. A Buckinghamshire squire, **John Hampden**, refused to pay his share of the tax, and raised the important question : Was it legal, in *any* crisis, to impose payment of ship-money on an inland county ? The case was tried before all the judges in the Court of Exchequer. Hampden's counsel argued first that there were two great legal means of providing for the defence of the kingdom—military tenures and parliamentary grants. They then showed the *illegality* of all unparliamentary taxation from the series of statutes extending from the Charter of William the Conqueror to the Petition of Right. The king's counsel, on the other hand, appealed to one or two precedents ; and set against statute law the Stuart theory of absolute sovereignty.

*Rex est Lex—the King is the Law*, they said. After the trial had lasted six months, a **majority of two judges decided in favour of the Crown**. The ship-money had to be paid, therefore ; but the attention of the country was aroused, and popular sympathy was with Hampden.

11. **The fourth Parliament** of Charles I. (April–May 1640) was not disposed at first to be extremely self-assertive. The king asked twelve subsidies, payable in three years. The Commons demanded a reversal of the judgment on Hampden, and an acknowledgment of the illegality of ship-money, as a condition of granting the money. Neither party would give way, and Parliament was dissolved.

12. **The Long Parliament**.—But it was impossible now to revert to personal rule, and Parliament again met in November 1640. This Parliament is very famous, and has always been called the **Long Parliament**, because it was not dissolved for more than twelve years. By a series of great measures it won back self-government for the nation, though at the tremendous cost, as was to turn out, of a king's life and a temporary change of the whole plan of governing. The Long Parliament was full of good and patriotic men, who were averse to making more violent changes than were absolutely necessary, but who were resolved that the despotism of the last forty years should continue no longer. It went to work at once, and in its first session of ten months its best work was done. The great cause of the misgovernment of the past years was **the suspension of parliamentary action**. A bill was accordingly introduced, to which the king

was compelled to give assent, prescribing a term of three years for every Parliament, and limiting the interval between Parliaments to three years. The Long Parliament also abolished ship-money, and reversed the decision against Hampden. All unparliamentary imposts were again forbidden; and the victim of the legal right of Parliament as against the divine right of kings, so far as taxation was concerned, was now finally won. But the greatest achievement of this assembly was the abolition of the jurisdiction of the Star Chamber as well as that of the High Commission Court. All the judicial power left to the Privy Council was the examination of prisoners, but all prisoners had the full right of demanding at law the reason for their loss of liberty. Several ministers were then *impeached*, of whom perhaps the most notable was Lord Strafford, an able and despotic man, who had been viceroy of Ireland.

13. **The Grand Remonstrance.**—Hitherto Parliament had been working as a united body, representative of the nation. But a section of it, thinking that enough had now been done to secure self-government, began to transfer its sympathies to the king, and to show a strong disapproval of any further lessening of the prerogative. Two measures, passed early in 1641—one forbidding prorogation or dissolution of Parliament without its own consent, and another depriving bishops of their seats in the House of Lords—increased the conservative feelings of this section. But their lukewarmness only made the advanced wing of the Parliament more sternly resolved to make a repetition of Charles's treacherous disregard of statutes impos-

sible. In the summer of 1641 the king went to Scotland, and negotiated with the army busy there. Parliament was suspicious that the subject of the negotiations was a plot to overbear it by military force. In November 1641 a **declaration of the state of the kingdom, or Grand Remonstrance**, was prepared and laid on the table of the House of Commons. This document professed to rehearse the action of Charles I. since his accession, in order to justify the counter-action of Parliament ; to assert the episcopal convictions of the nation, and their dread, not of Anglicanism, but of Popery ; **and to demand further safeguards of self-government, and especially control of the Privy Council by Parliament.** After much debate, it was adopted and printed.

**14. The Arrest of the Five Members, and the Militia.**—Charles was so enraged by the Remonstrance that he fastened a charge of high treason on its principal promoters. There was no foundation for the charge, and it was quite illegal. Accordingly, the accused persons refused to yield themselves up, and **the king came down to the House of Commons with an armed force, meaning to arrest five members.** The members were absent, and thus the king's purpose was foiled. The Commons considered that by taking this step the king had virtually declared war against their liberties, and henceforward they steadily contemplated the possibility of civil war. Suspicious of the king's command of military resources, they proposed in February 1642 that for the time the commanders of the militia should be nominated by the House of Commons. To this proposal

the king refused his assent, and war was now a certainty.

**15. The Civil War (1642-1649).—**The great war between King Charles I. and the Parliament lasted from August 1642, when the king raised the royal standard at Nottingham, till January 30, 1649, when Charles was beheaded. You will read about it in books on English history, and it is not necessary for me to say much about it here. During these six years, almost all the activity in the nation was military ; and the Long Parliament, though it was still in existence, did little but feed its splendid army. The conservative section had now sided definitely with the king. At first the royal forces were successful ; but the soldiers were dissolute and ill-trained, and afterwards yielded to the brave and capable levies mustered by the Parliament. After many bloody battles the king was made prisoner in 1647. The successful soldiers, led by Oliver Cromwell, were now the real governors of the country. They despised the Parliament ; and in December 1648 Colonel Pride expelled the great majority of the members of the House of Commons, leaving only about fifty men who were not likely to have much will of their own. Charles I. was then tried, condemned, and executed as a conspirator against the laws and liberties of England.

**16. Charles I. and the Church.—**In the reign of Charles I. the conflict between Puritanism and Anglicanism became very sharp, because under the king's influence Anglicanism became less and less Protestant. The two doctrines of the divine right of kings and the

divine right of bishops still went together ; and those who opposed the one opposed the other. The nation was as much afraid of losing Protestantism as of losing self-government. **Laud**, who was Archbishop of Canterbury from 1633 to 1641, was the king's principal ecclesiastical adviser ; and in him Anglicanism became very arrogant and reactionary. He was impeached by the Long Parliament, and executed in 1645. At this time the great majority of Puritans and all Anglicans equally professed attachment to the Church of England as reformed by Edward VI. ; but the Anglicans dreaded an advance towards Independency or Presbyterianism, and the Puritans a relapse towards Roman Catholicism.

17. **Cromwell and the Protectorate.**—After the execution of Charles I. the sovereignty nominally rested with the House of Commons, **though it really belonged to the army.** In 1649 both monarchy and the House of Lords were abolished, and England was declared a **Commonwealth.** Puritanism was victorious, and in the hour of triumph it broke with Episcopacy. **Presbyterianism** was the form of church government most in favour in London and with the majority of the clergy, and the Presbyterians were attached to monarchy. But the great general, Oliver Cromwell, was an **Independent**, and Independents were more republican than Presbyterians. Cromwell was now the foremost man in England, the head of a successful army, and the dictator of his country's policy. His policy was very successful abroad, and he made England a great force in Europe ; and at home his dictatorship steered the country through



a great crisis. In 1653 Cromwell expelled the Long Parliament, now dwindled to an unpopular remnant. A small assembly of 120 members, called 'Barebone's Parliament,' took its place; but Cromwell dissolved it in six months. He was then chosen **Lord Protector of the Commonwealth of England** by means of an **Instrument of Government**, which kept the sovereignty in the Parliament. As Protector, Cromwell summoned two Parliaments; but they did not sit long, for Cromwell felt that his power was independent of parliamentary sanction, and really rested on the influence of the soldiery. Meanwhile Charles II., who had fled from the field of Worcester, where Cromwell gained a great victory in 1651, was recovering some following, and royalist intrigues began. They assumed the dangerous form of negotiations with the Pope and promises to tolerate Roman Catholics. In 1655 the intrigues had become so numerous that Cromwell, fearing a general rebellion, **divided England into eleven districts, each presided over by a military dictator, called a Major-General.** This plan, though it answered its end, was quite unprecedented. Not only the nation, but even, in some measure, Cromwell himself, was overawed by the army. In 1657 the Instrument of Government under which Cromwell had been chief magistrate of a republic, was changed to the **Petition and Advice**, by which the Protector became practically a king, with unlimited power of naming a successor, and with right to a personal oath of allegiance. Cromwell's rule was perhaps the best England could have had at the time, for it was very strong, and he was a high-

mind, patriotic man. But his methods were new, and, while he was at the head of affairs, self-government was an impossibility. He died, in the midst of his valuable labours, in 1658.

18. **The Restoration.**—The loss of Cromwell's strong personality meant the end of the Protectorate. Oliver's son Richard, indeed, succeeded ; but a reaction soon set in and made rapid progress. The nation had become as much dissatisfied with the army as it had been with Charles I. Richard Cromwell was set aside ; and the Parliament resolved to set itself against the army, and recall **Charles II. on its own terms.** The Scotch helped the Parliament, for they were always Presbyterian and Royalist, not Independent and Cromwellian. Events moved very fast. **Monk**, who had governed Scotland during the Protectorate, suddenly shifted his allegiance from the army and the memory of Cromwell to the Parliament and the banished Charles Stuart. Unknown to the Parliament, which was discussing the terms on which it would recall Charles, Monk invited the exiled king to return. After issuing a declaration of indulgence to all religions, **Charles II. landed in England in May 1660.** The nation, in violent revolt against the Protectorate and the imperial rule of Cromwell, welcomed him passionately, and restored him unconditionally.

19. **Changes in Land Tenure - Excise.**—Thus a return was made to the constitutional standpoint of 1642, and thus the work of the Civil War and the Protectorate might seem to be undone. But, in fact, *except in religious matters*, hardly a step was lost. The

perfecting of the Constitution went on on the lines traced by **Magna Carta**, and in the direction prescribed by the growth of society. A new Parliament, overwhelmingly royalist in opinion, met in 1661. A great measure was at once carried, affecting, first, **land tenure**, and then **taxation**. Although the feudal system had been breaking up for centuries, the feudal tenures remained as they were at the time of the Norman Conquest. There were still barons, knights, and socmen (Chap. II. sect. 6), holding land in different ways—the barons and knights owing as rent either military service or a money equivalent for it; the socmen owing a *fixed* money rent only. But, as the benefit, and even the theory, of interdependence and allegiance was passing away, and that of independence and commercial competition taking its place, the lingering feudal obligations and payments were felt as an intolerable burden by the whole nation. The Parliament of 1661, therefore, swept away all the military tenures, and reduced the great majority of landholders to the position of socmen—*i.e.* men holding on a fixed tenure by virtue of a small money payment only, which tended to become more and more nominal. By this change the king lost the greater portion of his constant revenue, for with military tenures went aids, reliefs, and other feudal payments. To make up for the deficiency, a hereditary Custom on certain home manufactures, and especially on beer, invented in 1643, and called an **Excise**, was imposed, so that the royal income was made up to 1,200,000*l.*

20. **Charles II. and the Church.**—The ecclesias-

tical policy of this Parliament was thoroughly retrogressive. Charles II. was determined to oust the Puritanism and Presbyterianism he found reigning in England, and to substitute for it Anglicanism, more exclusive than that of Charles I. and Laud ; and the Parliament, so complete was the reaction against Puritanism, exceeded the king in zeal. In 1661 the **Corporation Act** was passed, by which 'all corporate magistrates and office-bearers were obliged to take the sacrament of the Lord's Supper according to the rites of the Church of England.' The **Test Act** followed in 1673. It was primarily meant to disqualify Roman Catholics, and it confined all civil and military offices to those who had taken the Anglican sacrament and the Oath of Supremacy ; but of course it disqualified Protestant Nonconformists as well. In 1678 **Roman Catholics were excluded from both Houses of Parliament.** In 1662 the **Uniformity Act** of Elizabeth was revived, with additional provisions which vastly increased its stringency ; and the **Conventicle Act** of 1664 and the **Five-Mile Act** of 1665 respectively prohibited every one above sixteen from attending a religious meeting, and every minister from holding a religious meeting within five miles of any parish or town. By these measures the Church of England was rendered nearly as exclusive as the Church of Rome had ever been. The theory of the divine right of bishops was settling down on the episcopate, and thus every act of intolerance had an imposing religious sanction. The Anglican Establishment of the Restoration seemed to her most conscientious members to be a divinely-commissioned

angel, with a sword turning two ways—against the corrupt Papists, and against the rebellious Dissenters—2,000 of the clergy suffered expulsion rather than submit to the Act of Uniformity. **Nonconformity**, representing the Puritanism which hitherto had found shelter within the Church of England, was henceforward a powerful force in English life, and greatly modified subsequent politics.

21. **The Habeas Corpus Act.**—The progress of self-government during the reign of Charles II., notwithstanding the despotism of the Church and the overweening influence of the Crown, is shown by the legislation of 1679 with respect to the liberty of the subject. From the very earliest times the commitment of any person to prison, without due cause assigned, was contrary to the aboriginal English legislative traditions, or common law. This recognised immunity from arbitrary imprisonment was confirmed and made statute law by Magna Carta. Thenceforward every person committed to gaol on a criminal charge or conviction was entitled to demand of the Court of King's Bench, and the Court was bound to give him, a writ of Habeas Corpus addressed to the gaoler, directing him to bring up the body of the prisoner, that the adequacy of the charge on which he was committed might be tried and determined. Such was the law of *habeas corpus* up till 1679. It secured the substantial liberty of the subject until the Constitution was paralysed by the Tudor dictatorship ; and it demonstrated, without a shadow of doubt, the illegality of the arbitrary imprisonments of the Stuarts. But it had several defects :

1. Only the Court of King's Bench could issue the writ of *habeas corpus*, and no single judge of the Court could do so in vacation ; 2. The law did not apply to imprisonment outside of England ; 3. The gaoler was not compelled to bring up the prisoner within a certain specified time ; 4. The statute law applied to commitments on criminal charges only. Galled by the arbitrary conduct of Lord Clarendon, Charles II.'s first Lord Chancellor, the first Parliament after the Restoration, which existed from 1661 to 1679, made various attempts to remedy some of these defects. At last, in 1679, the Habeas Corpus Act was passed, which, after re-affirming the existing law, provided (1) that any of the judges of any of the Courts—Chancery, King's Bench, Exchequer, or Common Pleas—might issue the writ, and in vacation as well as during session ; (2) that the law should apply to imprisonment in the colonies or other countries ; (3) that the gaoler should return the prisoner within twenty days, under penalties. Thus the first three defects of the old law were removed. (Legislation was not applied to commitments on *civil* charges until 1816, when the provisions of the Act of 1679 were extended to them.)

Summary  
Part  
1679

Thus we owe sincere gratitude to the Royalist and anti-Puritan Parliament of 1679, because, though it only confirmed and improved the aboriginal law of the liberty of the subject, it confirmed and improved it so much.

22. **Summary.**—The Tudors had been dictators ; and the Stuarts claimed a divine right to be despots. As the Crown grew more aggressive, the nation took

up a more decided position of defence. The dominant party in the Church, inheriting and exaggerating the Anglicanism of Elizabeth, supported the Crown ; and, claiming for themselves a modified sacerdotalism, supplied the Crown with theology to support its pretensions. The nation gathered itself together after the shock of the Reformation on the basis of legal right, and religion founded on the Bible alone. Slowly the Crown and the nation became open enemies. Enmity grew into armed conflict ; and although, at the moment of collision, the Crown had detached from the parliamentary ranks a body of men who cannot be called anti-national, it may be said that the *nation*, through its Parliament, fought with the Crown and overcame it. Puritanism was triumphant : the Church fell with the king. But the soldiery, which had gained the nation's victory, became its masters. The Protectorate of Cromwell was a military imperialism, such as England had never before seen. Cromwell died ; and the Stuart dynasty was restored in a blaze of anti-Puritanic enthusiasm. Through this series of crises the growth of self-government went on, and each crisis helped rather than hindered it. Even the Restoration, with its narrow ecclesiastical system and its reactionary spirit, did not undo what the Long Parliament had done. The assembly which passed the *Habeas Corpus Act* was no very unworthy successor of the assembly which adopted the Petition of Right.

## CHAPTER X.

## THE REVOLUTION (1685-1688).

1. **The Exclusion Bill.**—The national enthusiasm which recalled Charles II., and threatened to hunt Puritanism to death, lasted for a long time. The throne of the Stuarts seemed more secure than it had ever been ; and Charles and his Ministers, with a Parliament believing in them, were in a situation most favourable for establishing an effective despotism. But it was possible to abuse the confidence even of the Long Parliament of the Restoration, and Charles and his Ministers did abuse it. The substantial achievements of Puritanism, both in Church and State, were unshaken by the panic of Royalist reaction ; and with the continuance of these achievements, the Stuart despotism was radically incompatible. Puritanism aimed at, and had secured, self-government in the State : Charles II.'s model of kingship was absolutism. The Ministers, merely a clique of the Privy Council, **with no responsibility to Parliament**, were not, as a rule, high-souled or patriotic ; the House of Lords was ready to support the most extravagant royal claims. But none of these circumstances, nor all of them together, might have been sufficient to place a large section of the House of Commons in opposition to the Crown, **if Charles had not shown that his sympathies**



were with the Roman Catholic Church, and the nation had not become afraid that the work of the Reformation was to be undone. For the people of England, though they loved a hierarchy and a liturgy, were before all things Protestant. *France* was now the leading Power in Europe. Louis XIV. of France was an intolerant Catholic and absolutist, and the three chief Protestant states, England, Holland, and Sweden, in 1668 entered into a *Triple Alliance* against him. The constitutional cause in England was henceforward bound up with Protestantism and enmity to France, and Charles II. became a more and more avowed anti-Protestant and ally of France. Thus the king and the nation were once more arrayed against each other. In 1670 Charles and Louis signed the secret Treaty of Dover, by which Charles pledged himself to counteract the work of the Triple Alliance. For a long time the king's Minister tried to negotiate between the king and the Parliament, and between the king and Louis. Meanwhile a great party in Parliament was becoming thoroughly alarmed. Charles's brother James, Duke of York, was heir-presumptive, and he was an avowed Roman Catholic. The party most alarmed saw that if his succession were not prevented, the Protestant monarchy was doomed. Accordingly, in 1679, an **Exclusion Bill** was introduced into the House of Commons, to bar the succession of the Duke of York. The Protestant and nationalist party wished the succession to go to **Mary, niece of Charles II.**, who had married **William, Prince of Orange**, a strenuous upholder of the rights of Protestant Europe against Louis XIV. But a section of

politicians, headed by Shaftesbury, put forward the **Duke of Monmouth**, an illegitimate son of Charles II. There was a want of a well-defined national cause and great national leaders, and the **Exclusion Bill** was lost.

2. **Whigs and Tories.**—In this year of the Exclusion Bill, 1679, the nicknames '*Whig*' and '*Tory*' began to be applied to the two parties into which the nation was divided. The **Whigs** (whig, Scot. for whey) were the party most inclined to progress, most zealous for Protestantism and the legal rights of Parliament, and the great promoters of the Exclusion Bill ; the **Tories** (Irish, toree, 'give me' of a highwayman) were the party less inclined to progress, distrustful of popular power, zealous for the Divine Right of King and Bishops, and the successful opponents of the Exclusion Bill. The Tories were not, any more than the Whigs, advocates of a royal absolutism ; but their extreme jealousy for the rights of the Crown made them, at least while Charles II. lived, the enemies of self-government—the central principle of the Constitution.

3. **Accession of James II., 1685.**—The defeat of the Exclusion Bill and of the Whigs enabled Charles II. for six years to govern according to his own will. During these years the English once more ceased to be a self-governing people. On Charles's death in 1685, the Duke of York succeeded as James II. During his reign (1685–1688) matters grew rapidly worse. The first Parliament was overwhelmingly Tory ; and the Whigs, with no peaceful outlet for

their energies, were driven to futile rebellions under **Monmouth** in England and **Argyll** in Scotland. Terrible vengeance on the rebels was wreaked in the famous circuit of **Judge Jeffreys**, which you will read of as the 'Bloody Assize.'

4. **The Army.**—The great means for carrying out the plan of personal government adopted by James II. was **the increase of the military force**. You know that from the beginning there had been no *standing army* in England, that is to say there had been no men trained and existing to fight and to do nothing else. Throughout Europe standing armies were unknown till the end of the Middle Age, for **the military tenures of feudalism, and the universal obligation on freemen to defend their hearths**, provided as efficient offensive and defensive forces as were needed. But when feudal bands broke up, and there was much need of fighting, professional soldiers necessarily came into existence; and in countries where the kings got the powers which dropped from the grasp of the feudatories, **standing armies were sure instruments of establishing despotism**. In England, as we have seen, the powers which the Baronage had never possessed to a tyrannous extent went to the *Commons*, or *Third Estate*, rather than to the king; and thus it was not till the time of the Tudors and Stuarts that kings began to clamour for permanent classes of professional soldiers. *Henry VII. set up a body called yeomen of the guard, about 200 in number, for the defence of his person.* There were also small garrisons quartered in a few coast-towns. But the English people had an intense hatred of the idea of a standing army, and

the early Stuarts were forced to abandon several schemes for the creation of one. The national antipathy was increased by **the imperialism of Cromwell's great army** ; and, at the Restoration, Charles II. was obliged to disband it, *with the exception of a reserve force of 5,000 men, under the name of Guards*. He succeeded, however, by recalling a foreign garrison, in providing a standing army of more than 7,000 men. James II., whose plans of governing despotically were more developed, increased its numbers to 30,000. But the aversion of the nation was as great as ever. They felt that a standing army under the irresponsible control of the Crown was so great a **menace to self-government**, that the results of the struggles of 500 years might be lost in a night. If there must be a standing army—and the aggressions of France seemed to make it a necessity—it **must in some way be brought under the control of the House of Commons, representing the nation**. When and how this was done, you shall hear presently.

5. **James II. and the Church.**—Most terrifying to the people was James's ecclesiastical policy. Protestantism bound the whole nation together ; for Tory joined Whig, and Nonconformist worked with Churchman, to keep England free from the hated Roman influence. And the king's one object was to restore the Roman influence. His ideal was to found a Catholic and military despotism, like that with which Louis XIV. was threatening to enslave Europe. In 1687, and again a year after, a **Declaration of Indulgence** was published, repealing the Test and Uniformity Acts, and **proclaiming universal religious tole-**

**ration.** The toleration included the Protestant Dissenter, but James meant it to apply to the Roman Catholic. The Nonconformists knew this, and refused to avail themselves of the Indulgence. The king had taken the suicidal step which secured to him the opposition of a united nation. He ordered the second Declaration of Indulgence to be read aloud in all churches. Seven bishops refused to give the necessary directions in their dioceses, and they were forthwith sent to the Tower on a charge of sedition ; though, on a subsequent trial before the King's Bench, they were acquitted by a jury. Roman Catholics were admitted to the Privy Council. Above all, a new High Commission Court was set up, which, among other acts of tyranny, expelled the Fellows of Magdalen College, Oxford, for refusing to elect a Roman Catholic president. Thus the Universities, strongholds of heroic Toryism, were alienated ; and the nation, forgetting party opinions and sectional feelings, combined to fight for Protestantism.

6. **William of Orange.**—How was James II. to be set aside? The heir-presumptive was his daughter Mary, who had married William, Prince of Orange. But meanwhile a son was born to James, and, if the child was legitimate, Mary's claims were of course disposed of. *The nation turned to William of Orange, partly because he was Mary's husband, and partly because he was leader of the Protestant combination against France.* Gossip began to circulate that James's child was supposititious ; and such gossip fell in too completely with the national wishes to be disbelieved. In the spring of 1688 a band of Whig peers signed

an invitation to the Prince of Orange to come over and take the reins of Government. William, feeling that the leadership of England would be a great advantage to him in the European war, acceded, and landed on November 5. James fled to France ; and William, invited by the last Parliament of Charles II., began to govern for the time being.

**7. The Bill of Rights.**—James was thus got rid of, and an able man and sound Protestant was ruling in England ; but nothing had yet been done to dispose of the Crown. A Convention Parliament met in January, 1689, and the Whigs dictated its policy, though a great reaction in favour of James was in progress among the Tories, who were the majority in the House of Lords. Parliament first of all decided that James II. had broken the contract between king and people, and, by his flight, had deserted the throne ; and that the kingdom could not be safely governed by a Popish prince. It then turned to the Princess of Orange, having made up its mind that James's child was supposititious.

Meanwhile William announced that he would not govern unless he was made king for life. After discussion, both Houses agreed to do this, and to crown William and Mary joint King and Queen, on condition of their agreeing to a Declaration of Right, embodying some constitutional provisions. They did so ; and the coronation took place in February, 1689. Parliament met in October, and the Declaration of Right was enlarged and made into an Act of Parliament, which you must remember as the **Bill of Rights**. No English constitutional document, except Magna

Carta and the Petition of Right, is of equal importance ; for it was a new bargain between Crown and people. The retention of the crown by William and Mary was made conditional on their observing thirteen provisions,—**the violation of which had caused James II. to abdicate the throne, and leave it vacant.** 1. It is illegal for the Crown to suspend or execute laws without consent of Parliament : 2. It is illegal for the Crown to dispense with laws : 3. Courts, such as the late High Commission Court, are illegal : 4. It is illegal to levy money without consent of Parliament : 5. Petitions to Parliament are legal, and punishments for them are illegal : 6. It is illegal to raise or keep a standing army in time of peace, without consent of Parliament : 7. Protestant subjects may have arms for their defence as allowed by law : 8. Parliamentary elections ought to be free : 9. Freedom of speech and debate in Parliament is subject to Parliamentary control only : 10. Excessive bail and cruelty of punishment are illegal : 11. Jurors in high treason trials ought to be freeholders : 12. Fines and forfeitures before conviction are illegal and void : 13. Parliaments ought to be frequently held. On condition of their recognising these thirteen provisions, the crown was given to William and Mary jointly ; and the succession was to the issue of Queen Mary, and, failing that, to Anne, younger sister of Mary, and her issue, *if Protestant ; for there was a clause prohibiting any Papist from ever occupying the throne.* New oaths of allegiance and supremacy were incorporated in the Bill. Such is the substance of the Bill of Rights. You see that its object was again to make self-govern-

ment a reality ; and that it could not fail to do so, provided there was good faith on the part of the king and the Privy Council, with whom the ultimate executive power lay. No successful arrangement had yet been devised by which the king should be relieved of actual responsibility, and the Executive (the Privy Council) immediately controlled by Parliament.

8. **The Mutiny Act.**—The sixth clause which I quoted from the Bill of Rights, providing that no standing army should be kept in time of peace, without consent of Parliament, solved the problem of combining the inevitable permanent military force with the supremacy of Parliament. For the necessary Parliamentary consent was at once given by an Act called the **Mutiny Act**, which conferred on the Crown the right to regulate the Government of the Army and Navy, and to maintain discipline, for a year. The Mutiny Act has been passed annually, with one exception, and the *Estimates*, or calculated expenditure for Army and Navy, have been voted at the same time ; so that the existence of a standing army, even for one year, depends ultimately on the will of Parliament, representing the nation.<sup>1</sup>

9. **The Act of Settlement, 1700.**—The reign of William and Mary was on the whole a tranquil and successful one. But the reaction against the Revolution among the Tories continued, until a large section of the Tory party began to turn longing eyes towards the exiled James Stuart, and got the nickname of

<sup>1</sup> Very recent legislation (1879) has made the Mutiny Act permanent.—Government being annually empowered by Parliament to put its provisions in force.



**Jacobites.** So long as Princess Anne had children, the Protestant succession was secure ; but when her infant child died in 1700, it became necessary to make a new arrangement. The Act of Settlement was accordingly passed, **with the concurrence of the great majority of the Tory party.** Five of its provisions are well worthy of notice. 1. Failing issue to Anne and William, the succession is to revert to Princess Sophia, of Hanover, and her posterity : 2. All future sovereigns must be Protestant : 3. No sovereign may leave the country without consent of Parliament. (This provision was repealed in the reign of George I.) 4. The Privy Council shall aid the king in executive matters, *and its resolutions shall be signed by those present.* (This acknowledgment of committees or *cabinets* of the Privy Council was a step in the direction of Parliamentary control of the Executive, as we shall see in the next chapter.) 5. Judges' commissions are removable by address of Parliament. (Parliamentary control was thus virtually extended to the Bench.)

10. **Summary.**—Thus the Revolution was wrought out, and Parliamentary supremacy established. The aggressive Catholicism of James II., and the large standing army which he suddenly raised, united the nation in the resolve to secure a Protestant succession even at the cost of a change of dynasty. And the object was gained in a way which placed Parliament actually, where it had always been theoretically, in the van of the constitutional arrangements.

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## CHAPTER XI.

THE CABINET SYSTEM AND PARTY GOVERNMENT  
(1702-1815).

1. **Anne**, sister of Mary, and second daughter of James II., succeeded in 1702. Her reign is very important to the student of constitutional history, because it witnessed the solution of the last and not least important problem of government, namely, **how to make the Privy Council, and especially that active section of it known as the 'Ministry,' responsible to the House of Commons.** The solution, like most other solutions in English politics, was worked out gradually and by means of circumstances. The events of the seventeenth century, the Bill of Rights, and the Act of Settlement, had finally re-established the great principles of the **Parliamentary sanction of kingship and the predominant power of the House of Commons**; but they left the entire executive functions, the responsibility of carrying the laws into effect, to the Crown and the Privy Council. Such ample experience had been afforded in past history of the inconsistency of an irresponsible Council, or one responsible only to the Crown, with stable self-government, that patriotic statesmen in the reign of Charles II. tried to modify the system so as to make it less hurtful. The Ministries of Charles II. were secret committees, arbitrarily selected from the large Council, with all the odious characteristics of knots of favour-

ites. In 1679, **Sir William Temple** proposed that a new Privy Council should be elected, consisting of thirty members, chosen from the Peerage and landed gentry, of whom fifteen should be the king's Ministers. He thought that such a body would be small enough to be a manageable council, and large enough not to be a clique. The king consented to the proposal, and promised to follow the advice of such a council. But he did not keep his promise, and the secret committees, or **cabinets**, as they began to be called, reappeared. Recognising now the inevitableness of cabinets, Parliament **set itself to devise a way of controlling them, apart from the rest of the Privy Council.** The way was made evident by the necessities of party government. There were now two well-defined parties in the nation and the House of Commons, each with its ideal, its prepossessions, and its interpretation of history. The House of Commons could, therefore, never hope to represent unanimity, but only preponderance of opinion. But, if self-government was to be a reality, or, indeed, was to exist at all, **the Executive must give effect to the decisions of the preponderant opinion.** In other words, according as the House of Commons was Whig or Tory, the Executive must be Whig or Tory. The inevitable Cabinets, therefore, must be responsible both to the Crown and to the House of Commons, with its shifting balance of opinion; and the only way in which they could become so, was by being members of the Privy Council on the one hand, and of the party predominant in Parliament on the other. This solution slowly dawned on the minds of

statesmen, and the practice it involved was at first repulsive to the sovereign. It involved the practical abeyance of the royal power, while it increased its dignity by shifting responsibility from the Crown to the Cabinet. It thus became a settled maxim that 'the king can do no wrong.'

2. **Politics in the reign of Anne.**—Neither William III. nor Anne was willing to form a Ministry solely from the party which chanced to have a majority in the House of Commons. But the Whigs had been the party to bring about the Revolution, and William at last made up his mind to choose his Executive entirely from their ranks. Anne was not a strong-minded woman, and was much at the mercy of time-serving favourites. Definite political principles played no great part in her reign. But it would be generally correct to say that the Whig impulse which carried out the Revolution lasted from 1702 till 1710. During these years Godolphin was Premier, and Marlborough won his great victories over the French. The nation was getting tired of the war, and its aversion to it was expressed through the able Tory writers and statesmen of the day, men like **Swift**, **Oxford**, and **Bolingbroke**. A Tory reaction set in; the General Election in 1710 returned a House of Commons with a great predominance of Tory opinion; and the Queen, adopting the new cabinet system, consented to choose a **Tory Ministry**. That Ministry, led by Oxford, continued till Anne's death in 1714, and concluded the **Treaty of Utrecht**, in 1713, by which the French war was brought to an end.

3. **Scotland, 1603-1707.**—One of the greatest

events of Queen Anne's reign was **the entire Union, political, legislative, and commercial, of Scotland and England, in May, 1707.** The crowns, you remember, were united in 1603, when James VI. of Scotland succeeded Elizabeth as James I. of England. The reigns of the Stuarts were more unhappy times in Scotland even than in England. In England the classes of society lived on the whole happily together, and the worst side of feudalism did not show itself. Traditions of self-government had been handed down for 1,200 years ; there had been an excellent representative Parliament for 300 years ; King, Clergy, and Peerage had, as a rule, been able and patriotic ; and thus the Stuart despotism, though it strained the Constitution to the utmost, did not destroy it. But in Scotland feudalism showed its worst side. The barons oppressed their vassals and thwarted the king. The people were not represented in Parliament ; the Privy Council and the Court of Session were arbitrary and cruel. When **the Reformation** came it set every heart on fire, and morally and intellectually made of the Scotch a new people. But for a long time it brought no social and political improvement. The nobility took the side of the reformed faith, and their feudal ties to the people were strengthened rather than weakened. The influence of Geneva, acting on the Scottish temperament, made the Protestantism of Scotland not only **Puritan** but **Presbyterian**, and Presbyterianism was established in 1592. Now James VI. could tolerate only Protestantism of the Anglican type ; and the Presbyterian Establishment, with its democratic ideas and jealousy of civil control, he

treated as an enemy. But Scotland was nothing if not Presbyterian ; and thus James, especially after he moved his Court to London, was not the 'father of his people,' but a mere tyrant from the outside. The history of Scotland in the seventeenth century is the record of a long, bitter, bloody struggle between the impassioned Puritanism of a partially-civilised people without political institutions or political experience, and the despotic aggressiveness of an Anglicanism becoming more and more Roman in character. **James VI. (I.) succeeded in establishing Episcopacy in 1610.** Henceforward the established church of Scotland was a close pattern of its sister in England, except that it wanted a liturgy ; and that want Archbishop Laud was eager to supply. He constructed a Service-Book, and attempted to force its acceptance by the Scottish people. They resisted, and their resistance began the movement which ended in the Civil War. In that war the position of the Scots was peculiar ; for **they wished to regain the Presbyterian Establishment, and at the same time to maintain their allegiance to the Stuarts.** The two things were incompatible, and this the Scotch learned at last through much blood and misery. They had adopted triennial Parliaments, and some other good things of the reforming party in England ; and they had done away with the **Lords of Articles.** But, so long as they clung to the Stuarts, they had no liberty. Charles II. ruled Scotland as an irresponsible despot with a large military force. The Presbyterian Church set up in 1592 was declared illegal, and its ministers were driven to worship in dens and caves of the earth. This state

of matters, growing worse and worse, lasted till the Revolution of 1688, in which the Scots eagerly joined. Better times began. **Presbyterianism was re-established**, and seemed of a more law-abiding type than when persecution goaded it to fanaticism. But all particular plans of reform were lost sight of in the great and manifest need of a political and legislative union between the two countries. Above everything Scotland needed a **Constitution**, a just scheme of self-government. Out of her untrained political consciousness she could not evolve such a scheme ; and thus at last her leading men consented to a **Union**, which took place on May 1, 1707.

4. **The Treaty of Union** between England and Scotland had six provisions. 1. That the succession was to go to Sophia, granddaughter of James I., who had married the Elector of Hanover, and her children, being Protestants. 2. That all commercial privileges enjoyed by England were to be enjoyed by Scotland. 3. That the Great Seal, coin, weights and measures, should be common to both countries. 4. That the establishment of Episcopacy in England, and of Presbyterianism in Scotland, should be regarded as fundamental conditions of the Union. 5. That there should be one Parliament of Great Britain, with forty-five Scotch representatives in the House of Commons, and sixteen, elected every Parliament, in the House of Lords. 6. That taxation should be the same for both countries. —The Scottish judicial system continued as before.

5. **George I. and the Whigs.**—Upon the death of Anne in 1714, George, son of the Elector of Hanover, succeeded, without any opposition. Although the

Tory party, which had been in power since 1710, were understood to have Jacobite sympathies, they did not bring them forward at this time. But the new king naturally gave his confidence to the Whigs, who had been the chief agents in bringing about his succession. They had also at this time a considerable majority in the **House of Lords**, and, after the Election of 1715, a large majority in the House of Commons. A Whig Ministry was soon formed ; and, under various leaders, but especially **Sir Robert Walpole** and **Henry Pelham**, the Whig party continued in power till the accession of George III. in 1760. The cabinet system was now fully established ; and there was always a **Whig Executive from 1715 to 1760**, because the predominant opinion in the country and the House of Commons during these years was always Whig.

6. **The Septennial Act.**—The eighteenth century saw no addition made to the governing arrangements of Great Britain : they were now complete. So long as the **House of Commons** really represented the nation, a prolonged tyranny, either of king or nobility, was an impossibility, unless the nation wished a tyranny. Triennial Parliaments had been the rule since the Restoration. In 1717 the duration was extended to seven years, because the Government felt too weak to face the constituencies, and they wished to retain office. Septennial Parliaments have been the rule ever since.

7. **George III. and the Government.**—With the accession of George III. in 1760, the Whig ascendancy came to an end. The Whig Ministers had not been very high-minded men ; and, as the **House of**



**Commons did not really represent the nation**, they continued in power latterly more because the House of Lords was Whig than for any other reason. The first two Georges were Germans and not Englishmen ; and, provided they were secure of the throne, they cared little for the politics of England. And so the Whigs, who were at least staunch Hanoverians, ruled almost like an oligarchy, sure of the unintelligent favour of the king, and with insufficient means of being fairly controlled by public sentiment. But George III. changed all this. He had a great fancy for governing personally ; and the Tory party, who for half-a-century had been gathering themselves together and awaiting an opportunity, helped him to do this, and to rid the country of the Whig oligarchy. The king no doubt sincerely wished to institute a better state of things ; but he was wrong in supposing that governing personally was the way to do it. He did not attempt to do without cabinets responsible to the House of Commons ; but he got his own favourites made ministers, men without intellectual power or independent judgment, who were mere passive instruments of his own will. Discontent arose in the country, and spread to the House of Commons. It seemed as if the battle of self-government would have to be fought over again. Between 1760 and 1770 there were perpetual changes of worthless ministers, and public policy was dictated from the closet of the king. **In 1770 the Tory Cabinet of Lord North was formed**, and it included some patriotic men.

**8. Revival of the Tories.**—Circumstances were unfavourable to a prolonged royal or court tyranny.

Although the House of Commons did not indeed represent society, public opinion could make itself felt, and far-seeing statesmen did not dare to work much in opposition to it. **The Press had been free from Government control since the beginning of the century**; and a long line of supremely able men, from Swift and Bolingbroke to Burke and the anonymous 'Junius,' had written on political subjects philosophically enough to commend themselves to the thinking classes of a very argumentative age. Burke and 'Junius' condemned the system of George III. in language which all could understand. Then more independent statesmen were coming to the front. Both Tories and Whigs became more liberal, more progressive. The Ministry of Lord North broke up in 1782. The Whigs would naturally have formed a Government, and they made one or two attempts to do so, but their party was divided; and not till December 1783 did a settled Administration, under the premiership of **William Pitt**, take office. Pitt's father, **Lord Chatham**, one of the greatest statesmen of the former generation, had been a Whig; but Pitt himself liked to have Tory colleagues, and has always been reckoned a Tory. In this way he kept the confidence of the king, who hated the Whigs; while, by his ability, moderation, and patriotism, he kept the action of the Crown in check. His Ministry lasted, with brief intermissions, till his death in 1806; and the Whig energies, mainly under the direction of *Charles James Fox*, were exerted in Opposition.

9. **The War with France.**—It was by Pitt's commanding influence and modern spirit, and the fortu-

nate circumstance that he was content to work with Tories, that the unhealthy personal government of George III. was brought to an end. The ascendancy of the Tory party was secured by the course of events in France. The great **French Revolution** against the old order of society began in 1789 ; and Englishmen of all classes and ways of thinking, including many Whigs, were terrified at its rapid progress and hideous developments. They were tempted to think that such revolution was the inevitable result of popular power, and to cleave to the party which most distrusted the people. Pitt was slow to make himself the enemy of France ; but when Louis XVI. was guillotined in 1793, the horror of the English nation drove Pitt into war with the Republic, though it was left to France to make the formal breach of peace. Henceforward, fear of revolution and dread of reform, as a sure step towards revolution, were the determinant forces in English politics, and secured the continuance of Tory ascendancy. Many of the most influential Whigs supported the ministerial policy ; and **when the revolutionary anarchy in France passed into the overshadowing despotism of Napoleon**, the advocacy of peace by **Fox and the new school of Whigs** seemed a traitorous playing into the hands of the common enemy of Europe. At last even Fox gave way, and England was united. **Both Pitt and Fox died in 1806.** From 1806 to 1812 there were weak Ministries, first under Whig, then under Tory, leadership ; but their policy was the policy of Pitt, and its aim was the chastisement of Napoleon. In 1812 the Cabinet of Lord Liverpool was formed,

and an unyielding frost of Toryism settled on all the springs of English life and progress. In military affairs, and abroad, all was movement and success. **Under the generalship of Wellington** the armies of England were in the Peninsula slowly breaking down the power of Napoleon; and in 1815 **the great victory of Waterloo** made England the foremost State in Europe, and brought the long war to an end.

10. **Ireland, 1603-1801.** — The accession of James I., so important in uniting the crowns of England and Scotland, began a period of some brightness in Irish history. James gave no toleration to Catholicism, the religion of the great majority of the people; but he made many *legal* reforms. He introduced the English feudal land-tenures, appointed sheriffs, provided circuits of assize, made the Parliament more representative of the people, and, generally, transplanted the arrangements of the English Constitution to Ireland. Especially he forfeited the great domains in Ulster of the lords who had taken the lead in the rebellion against Elizabeth, and redistributed them among English and Scotch settlers, so that in a short time Ulster was a flourishing Protestant colony. The great Irish event of the reign of Charles I. (1625-1649) was the able and unscrupulous tyranny of Strafford. **The rebellion of 1641** followed. The Catholics wished their religion to be established. **The rebellion was fiercely quelled by Cromwell**, but the spirit of disaffection smouldered on, and the contest between English and Irish became more and more purely religious—a contest of Protestant against Catholic. Cromwell

planted great parts of the country with English settlers, men of stern character and Protestant faith. The Restoration, and the un-Protestant sympathies of the clergy and later Stuart kings roused the Irish Catholics to make a new effort to shake off Protestant ascendancy. They might have been successful if the Revolution had not come and determined the final victory of Protestantism in Great Britain. When he was driven from England, James II. went to Ireland and rallied the Catholics to him. But William III. put himself at the head of the Protestants, and in 1690 routed the Catholics at the Boyne, and forced James to flee to France. Peace was made by the Treaty of Limerick, the first article of which provided for the protection of the rights of Catholics. But the article was not kept; and the object of English policy in Ireland in the eighteenth century was the maintenance of Protestant ascendancy by means of the Established Church and the Parliament, and the banishment of the Catholics from all civil and political rights. Even the electoral suffrage was taken away from them. By this system of repression quiet at least was secured, while the Government of Great Britain was peaceful, Protestant, and Whig. The Church, the Protestant landowners, and the Parliament, since Poyning's law a mere echo of the one at Westminster, had things their own way. But the influence of Pitt brought a change. Pitt disliked the dominion of the landlords; he was full of modern and liberal ideas. He was anxious to establish free trade between Ireland and England, and to do away with Catholic disabilities. Circum-

stances worked for him. Since 1753 there had been a patriotic party in Ireland, not always wise but always very fervent. Persuaded by the eloquence of Grattan and others, the Catholics again clamoured for emancipation. **In 1782 complete independence was given to the Irish Parliament.** But the ascendancy of the Church and the landlords remained. Another religious war broke out. **Pitt then conceived the idea of a legislative Union.** The idea was not pleasing either to the Protestant landlords or to the Catholic malcontents. **But in 1800 it was carried out.** A hundred members represented Ireland in the House of Commons; twenty-eight temporal and four spiritual peers in the House of Lords. From this time the constitutional history of Ireland is merged in that of Great Britain.

11. **The House of Lords** was considerably changed during the Premiership of Pitt. Never since the decimating Wars of the Roses had the Peerage been a large body, though its numbers had been steadily increasing. The Peers created by the Stuarts had been too often mere favourites, and the House of Lords at the accession of George III. was a Whig oligarchy. Pitt created about 150 Peers—**most of them members of the middle class.** Henceforward the House of Lords represented *property* and *wealth*, as well as, or more than, *merit* and *ancient descent*; and thus, by the beginning of the present century, the inevitable substitution of commercial for feudal ideas, which had been going on since the time of Edward III., had got so far as to modify, and almost transform, the haughty English nobility.

**12. Summary.**—The Revolution dissipated the theory of the Divine Right of Kings, but it left the Parliamentary king and his council practically uncontrolled by Parliament. The continued existence of political parties suggested, and then necessitated, the choice by the sovereign of ministers whose opinions were those of the majority of electors in the kingdom; and, as those opinions varied from time to time, Ministries had to be changed independently of the personal predilection of the sovereign. All ministers were members of the Privy Council; and thus they had a double responsibility—to the sovereign as Councillors, and to the House of Commons, representing the nation, as bound to carry out the wishes, periodically ascertained, of the majority of the people. Thus self-government, which had always been the theory of the English Constitution, was made the practice, although the written code was not added to. Thus, too, the security of the regal position was enhanced, for responsibility was deputed from the Crown to the Cabinet. The constitutional history of the eighteenth century is the history of the trial of the cabinet system and of party government, and of its success. For about fifty years the Whigs held power. George III. tried to revive personal government; but his attempt was defeated, partly by the revival of the Tories, who resisted the king less than the Whigs, and who yet constructed a strong cabinet, and partly by the influence of the younger Pitt, who worked with the party which the king trusted, and who was also national and patriotic. The French Revolution and the war with Napoleon kept the Tories in power till

the peace of 1815, and much longer. The Union with Scotland in 1707, and with Ireland in 1800, gave Great Britain and Ireland one Constitution, as it had long had one king.

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## CHAPTER XII.

### THE REFORM ACTS (1832 AND 1867).

1. **The Revival of the Whigs.**—The great success of England in the war against Napoleon, and the engrossing interest of foreign politics, diverted the attention of statesmen from the internal condition of the country, and made the people indisposed to quarrel with the Tory system of government which had prevailed so long. But, after the establishment of the long peace which followed the battle of Waterloo, a change in public sentiment began to show itself. The change from war to peace came so suddenly, and was so complete, that the nation was hardly ready for it. There was an immense development of industry, and the supply of productions far outran the demand. The pressure of taxation was felt to be very heavy; the price of provisions was very high. Riots were frequent; and the Tory government of Lord Liverpool contented itself with putting them down, and did not go on to attempt any remedy for the discontent which they expressed. But a new class of statesmen was rising up who were more able to deal with the wants of the time than the great party which had



advised the sovereign since the accession of George III. Men like **Grey**, **Brougham**, and **Russell**, who inherited the Whig traditions of the Revolution, were prepared to base a policy on the sentiments which Fox had expounded, and to put themselves in sympathy with the mass of the people, rather than the Court and the privileged classes ; while such men as **Canning**, **Peel**, and **Palmerston**, though they were not ready to become Whigs, were awake to the folly of merely struggling against the currents of modern life. In 1820 died George III., whose influence had determined the complexion of Toryism for half a century ; and in 1827 died Lord Liverpool, who had been the tranquil spokesman of Toryism for fourteen years. It was easy to predict that the Whig party would soon be in office.

2. **English Society and Representation.**—The first great need which the Whigs acknowledged was the reform of the House of Commons. **The House of Commons exists that it may represent the classes taxed and legislated for, that they may govern themselves.** Roughly speaking, from 1295 to 1400, it attained that end. From the close of the fourteenth century onwards, **the great process of the substitution of commercial for feudal relations between man and man proceeded rapidly.** Trade grew to enormous dimensions ; great towns arose ; and a vast **middle class** established itself in English society. In 1830, this class, free, taxed, and legislated for, was practically unrepresented in the House of Commons. **The county franchise** was where it had been fixed in 1430 : unless a man had a freehold worth 40s. a year,

he had no vote for a member of Parliament. The **borough franchise** was different in every town : in some cases self-elected town councils possessed it ; sometimes a great territorial lord in the neighbourhood, or at a distance, presented the representation of a town to a favourite ; many of the most important towns, such as Leeds, Manchester, and Birmingham, had no members at all. More than one statesman in the eighteenth century felt the evil of this state of matters, and made proposals for the representation of the middle class in counties and towns. But the great outbreak of democracy in the French Revolution terrified Englishmen, and made opposition to Parliamentary reform seem the only safe course.

3. **The Reform Act of 1832.**—The Whig party, under the leadership of Lord Grey, took office in 1830, and at once set themselves to improve self-government by making the House of Commons more accurately representative of the people. A measure prepared by Lord John Russell was, after much opposition, passed into law in 1832. It rectified both county and borough representation. The franchise in counties was extended to certain classes of leaseholders and other tenants : that in boroughs was given to all men inhabiting houses of the annual value of 10*l*. Many pocket-boroughs were disfranchised, and Birmingham, Manchester, and Leeds received each two members. The same year reform measures were passed for **Scotland** and **Ireland**, whose representation had been still more scandalously imperfect. The **borough franchise in Scotland was made identical with that in England, and the county franchise was**

given to all proprietors of lands, houses, &c., of the yearly value of £10, and to certain classes of leaseholders. The Irish Reform Bill established almost the same state of things. Thus, after 1832, the middle class was represented ; and a political change, as is always the case, had followed a social one.

4. **The Reform Acts of 1867 and 1868.**—Twenty years had hardly passed, when there were signs that the Act of 1832 was by no means a final settlement. The principle had been admitted that county members ought not to represent only landowners ; and, that being so, it was difficult to see why small, as well as large, leaseholders should not have the franchise. The large working-class in towns, who occupied houses and paid rates, were totally unrepresented, inasmuch as every town-voter must occupy a house worth 10*l.* ; and it was difficult to reconcile such a state of matters with Edward I.'s cardinal maxim : **The taxpayer must be consulted before he is taxed.** The manufacturing towns were growing more rapidly than ever, and very large classes were unrepresented. After several unavailing efforts by both parties between 1852 and 1867 to improve representation, the **Conservative Administration of Lord Derby**, by the agency of **Mr. Disraeli**, in the latter year succeeded in passing a second and very thorough Reform Bill for England, which was followed in 1868 by measures for Scotland and Ireland. By these Acts the county franchise in England was extended to all occupiers of lands or houses of the yearly value of £12, and in Scotland to all £5 property owners and £14 property occupiers ; while that in Ireland was not altered. The

borough franchise in England and Scotland was given to all ratepaying householders and to lodgers occupying lodgings of the annual value of 10*l.* ; and in Ireland to all ratepaying 4*l.* occupiers. Thus the House of Commons was made nearly representative of all taxpaying commoners, except agricultural labourers and women ; and on this basis it has continued for fourteen years. It is expected that the Administration now (1881) in power will, if it has the opportunity, give the franchise to agricultural labourers ; but the extension of the suffrage to women seems yet a long way off.

**5. Religious Toleration and Free Trade.**—Two great principles have been at work in the nineteenth century, which have largely affected ecclesiastical and financial legislation. One is the principle of **religious toleration**, which prescribes that no civil disability should accompany nonconformity to the Established Church ; and the other is the principle of **free trade**, which, so far as taxation is concerned, prescribes that no import duty should be levied on necessary food. In obedience to the principle of religious toleration, the Test and Corporation Acts were repealed in 1828 ; Roman Catholics were admitted to Parliament and to various civil, political, and judicial offices in 1829 ; Jews were admitted to corporations in 1845 and to Parliament in 1858 ; the Church Establishment of a Protestant minority in Ireland set up by Elizabeth was disestablished in 1869 ; and persons of any religious belief were admitted to degrees and lay offices in the English Universities in 1871. In obedience to the principle of free trade, a series of legislative enact-

**ments between 1846 and 1852 abolished many duties on food-stuffs, and especially the import duties on foreign corn.**

6. **Summary.**—Thus the peace of 1815 was the beginning of the end of the political stationariness which had prevailed in Great Britain since the Revolution. The absence of external excitement enabled progressive statesmen to see that, though the Constitution was theoretically unexceptionable, the practical working of its central portion, the House of Commons, had been vitiated by the unrecognised growth of society. The middle class was nearly unrepresented, and the Reform Act of 1832 enfranchised the middle class. The Parliament of 1867, anxious to make representation more complete, enfranchised the greater portion of the working class. Thus the effort of legislation in the nineteenth century has been to make self-government a reality for a vastly increased population. To the improved representation of the middle class we may mainly attribute the success of the principles of religious toleration and free-trade, which, without destroying all church establishments and indirect taxation, have respectively prevented men from being punished as dissenters, and from being overcharged for the necessities of life.

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I have thus tried to tell how the group of arrangements which we call the English Constitution began about 1,300 years ago, and slowly grew into their present form. Though the growth has been slow, it has been steady, because the principle of growth has been

uniform. The nation, more and more perfectly representing itself, has been a self-governing nation from the beginning, and its constitutional history is the history of its effort to attain and its success in attaining, in the midst of religious and social changes which it could not control, its first ideal. Sometimes kings have helped the progress, sometimes the Peerage, sometimes the Commons ; but always the goal has been the same. When we think of the law and liberty which we enjoy, and of the small amount of civil war and revolution with which our past is burdened, may we not congratulate ourselves that our island was colonised by those old German tribes with their great talent for governing, and truly say that the English Constitution is a strong and successful one ?

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